Volume 30, Number 18
Pages 1885–1986
September 15, 2005

SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

The *Missouri Register* is published semi-monthly by

SECRETARY OF STATE

ROBIN CARNAHAN

Administrative Rules Division

James C. Kirkpatrick State Information Center

600 W. Main

Jefferson City, MO 65101

(573) 751-4015

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•

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•

ASSOCIATE EDITORS

CURTIS W. TREAT SALLY L. REID

•

PUBLISHING STAFF

WILBUR HIGHBARGER JACQUELINE D. WHITE

ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO

Subscription fee: $56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

MISSOURI REGISTER

Office of the Secretary of State

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MISSOURI REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at http://www.sos.mo.gov/adrules/pubsched.asp

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The rules are codified in the *Code of State Regulations* in this system—

Title	***Code of State Regulations***	**Division**	**Chapter**	**Rule**
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

Title *[4] 7—[DEPARTMENT OF ECONOMIC DEVELOPMENT]* ***DEPARTMENT OF TRANSPORTATION***
Division 265—*[Division of]* **Motor Carrier and Railroad Safety**
Chapter 10—Motor Carrier Operations

EMERGENCY AMENDMENT

[4] 7 **CSR 265-10.020 Licensing of Vehicles**. The commission is amending subsection (1)(C); sections (2), (3), (4), and (5), and subsection (5)(A).

PURPOSE: This emergency amendment will eliminate the requirement that motor carriers who have properly registered their interstate operations, and have paid the Missouri regulatory license fee for each motor vehicle operated in interstate commerce within this state, must obtain and display an additional form of regulatory license when they operate the same vehicle in intrastate commerce. The rule currently requires interstate carriers to display a MoDOT license decal on each motor vehicle operated intrastate, in addition to the credentials they already must carry whenever they operate the same vehicle in Missouri interstate commerce. The amendment will not excuse any carriers from paying the same, annual, regulatory license fee of ten dollars ($10) for each motor vehicle operated in Missouri, but merely eliminates the provisions that currently require carriers to obtain dual interstate and intrastate credentials for the same vehicle.

EMERGENCY STATEMENT: By authority delegated from the Missouri Highways and Transportation Commission, the Missouri Department of Transportation finds that an immediate danger to the public health, safety or welfare requires emergency action, or that this amendment is necessary to preserve a compelling governmental interest that requires an early effective date, to eliminate the dual licensing requirements imposed on interstate motor carriers by the current rule— in time to avoid urgent and significant expenditures by MoDOT and by the affected motor carriers.

It takes at least six (6) to nine (9) months after filing to complete the rulemaking procedures required for a proposed amendment. But unless this emergency amendment is filed and adopted promptly, over the next one (1) to five (5) months MoDOT must incur expenses of approximately four thousand five hundred twenty-seven dollars ($4,527) for the production of the 2006 annual license decals, and for the envelopes and postage needed to send those decals to interstate motor carriers, who must obtain dual credentials for their vehicles to operate both interstate and intrastate under the present rule. In addition, MoDOT must devote its employees' labor—with an estimated value of thirty-one thousand four hundred thirty-four dollars ($31,434)—as needed to issue dual regulatory licenses to these interstate motor carriers, even though they already paid Missouri's annual license fees for the same vehicles, when they registered their Missouri interstate operations. These public expenditures can be avoided only by the filing and adoption of this emergency amendment, because only that will relieve MoDOT of the duty, under the current rule, to issue approximately thirty-five thousand six hundred seventy (35,670) intrastate license decals, to two thousand one hundred seventy-one (2,171) registered interstate motor carriers who operate the same vehicles in both interstate and intrastate commerce.

Meanwhile, unless this emergency amendment is filed and adopted, approximately two thousand one hundred seventy-one (2,171) interstate motor carriers who use the same vehicles in both interstate and intrastate commerce will incur costs of approximately two hundred twenty-seven thousand ten dollars ($227,010). These are the estimated labor costs of compliance with the dual licensing requirement of the present rule, for the motor carriers who must obtain, handle, and display the required intrastate license decals, upon approximately thirty-five thousand six hundred seventy (35,670) motor vehicles which are subject to this dual licensing requirement. But these expenses will be needlessly wasteful and duplicative for the affected motor carriers, because they will have already paid MoDOT's annual regulatory license fees, and will have already obtained interstate credentials, when they registered their interstate operations. The adoption of this emergency amendment would eliminate the existing requirement that these carriers must obtain dual licenses for the same vehicle, when it is used in both interstate and intrastate commerce.

The regulatory licenses issued pursuant to this rule are effective from January 1 to December 31 in the next succeeding year. However, it is necessary for MoDOT to begin issuing these annual license renewals much earlier, to provide sufficient time for the motor carriers to complete and file their license renewal applications, for MoDOT to process the applications and deliver the proper credentials to the carriers, and for the carriers to physically place the credentials on their motor vehicles before the January 1 effective date. MoDOT has traditionally issued these annual licenses beginning on August 1 in the year preceding the effective date, and carriers are required to file their renewal applications not later than November 30. Unless there is emergency action to amend this dual licensing requirement, these motor carriers must needlessly bear the costs of filing their 2006 annual license renewal applications (between August 1 and November 30, 2005), requesting the issuance of annual licenses in dual forms that cover the same vehicles (by December 31, 2005)—to be followed, within a few days' time (on January 29, 2006), by the effective date of a proposed amendment making it completely unnecessary for them to obtain dual credentials for the same

vehicle. That would put an unfair financial burden on the affected motor carriers, which imposes an immediate danger to the public health, safety or welfare that requires emergency action. In addition, the fickle timing of the existing requirements, followed quickly by a proposed amendment that would largely eliminate those requirements, could needlessly waste motor carrier resources, while giving the appearance of arbitrary and capricious government. To preserve a compelling governmental interest in avoiding such arbitrary and capricious regulation, and in avoiding further strain upon the financial resources of MoDOT and the affected motor carriers, an early effective date for this emergency amendment is required.

MoDOT has followed procedures best calculated to assure fairness to all interested persons and parties under the circumstances, in that MoDOT officials have personally met with representatives of the public and private entities most directly affected by this rule. On June 21, 2005, authorized MoDOT personnel met with officers from the Missouri State Highway Patrol (MSHP), a public law enforcement agency that partners with MoDOT in the enforcement of the licensing requirements of this rule. Also present at the meeting was an authorized representative of the Missouri Motor Carriers Association (MMCA), the largest nonprofit trade association representing motor carriers located within this state, who are required to comply with this rule. MoDOT provided these interested parties with a draft copy of the proposed text of this emergency amendment; together, we reviewed the draft, considered and implemented changes suggested by all parties, and provided them with a copy of the revised emergency amendment for review, along with a proposed amendment including the same changes (along with other changes that do not require emergency action, and are not included in this emergency amendment). These interested parties expressed no objections to MoDOT proceeding with this emergency amendment, simultaneous with MoDOT's promulgation of the proposed amendment. MMCA's President and CEO, Mr. George W. Burruss, has written a letter of support for this emergency and permanent rulemaking, a copy of which is on file with MoDOT.

*The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. This emergency amendment was filed August 15, 2005, effective August 26, 2005, expires February 23, 2006.*

(1) No motor carrier shall operate any motor vehicle on the public highways in Missouri intrastate or interstate commerce under any property carrier registration, certificate or permit issued by the division, unless the vehicle is accompanied by a valid regulatory license**,** which shall be carried or displayed on the vehicle in compliance with this rule. As used in this rule, the terms "regulatory license" and "license" include a license sticker (decal), license stamp, or registration receipt issued in compliance with this rule. Except as otherwise provided in this rule or the **Single State Registration System (SSRS) Procedures Manual**, which is incorporated by reference in this rule the following requirements are applicable to all regulatory licenses, license fees and motor carriers within the jurisdiction of the division:

(C) When a motor carrier has paid the annual regulatory license fee for a motor vehicle **used in interstate commerce and displays or carries the proper regulatory license as required**, and the carrier*['s use of that vehicle requires it to display or carry additional or different forms of regulatory licenses, then upon the carrier's application in conformity with the applicable provisions of this rule, the division shall issue to the motor carrier all the required forms of annual regulatory licenses for that vehicle without payment of any additional fee;]* **uses the vehicle in interstate commerce transporting property or passengers exempt from Federal Motor Carrier Safety Administration (FMCSA) economic jurisdiction, or in intrastate commerce, the provisions of this rule shall not require any additional payment or display of regulatory license;**

(2) Except as provided in **subsection (1)(C) or** section (7), motor carriers engaged in interstate transportation in Missouri under authority issued by the ICC or FHWA shall pay the annual regulatory license fee for each vehicle operated within Missouri under that authority. The fees shall be paid to the registration state in which the carrier registers its ICC or FHWA authority as required in the SSRS Procedures Manual before the vehicles begin operating within Missouri. The required regulatory license for these vehicles shall be a true copy of the registration receipt issued by the registration state, showing that the carrier has paid the required Missouri annual license fees, which shall be carried in each vehicle while operating under ICC or FHWA authority in this state.

(3) *[Every]* **Except as provided in subsection (1)(C), every** motor carrier operating in intrastate commerce, or interstate commerce transporting property or passengers exempt from FHWA economic jurisdiction, or both, under a property carrier registration, certificate or permit issued by this division, shall apply to the division for the issuance of regulatory licenses no earlier than the first day of August, for each motor vehicle which it intends to operate on the public highways in Missouri during the ensuing year. Applications for these annual licenses shall be in writing and shall contain the following information:

(4) *[Motor]* **Except as provided in subsection (1)(C), motor** carriers shall display on each motor vehicle operated in intrastate commerce *[only, or both intrastate commerce and interstate commerce transporting property or passengers under ICC or FHWA authority,]* an annual license in the form of a license sticker (decal) issued by this division.

(5) *[Motor]* **Except as provided in subsection (1)(C), motor** carriers shall *[display]* **carry** on each motor vehicle operated in Missouri interstate commerce transporting property or passengers exempt from FHWA economic jurisdiction an annual license in the form of a license stamp issued by this division. These stamps shall be issued and displayed as follows:

(A) Upon the filing of the required application, and payment by a qualified applicant of the required annual license fee in conformity with the payment requirements of subsection (1)(I) of this rule, the division shall issue a license stamp which shall be permanently attached to a Form D-1—Uniform Cab Card which shall *[accompany]* **be carried in** the licensed vehicle*[. If the regulatory license fee for the particular vehicle to operate in Missouri has already been paid to the registration state in compliance with the SSRS Procedures Manual, the division shall issue to the motor carrier an annual license sticker for that vehicle without payment of any additional fee]*;

*AUTHORITY: sections 622.027, [RSMo Supp. 1997] **390.041(1), and 390.138, RSMo 2000, and 226.008 and 390.136, RSMo Supp. 2004.** This rule was previously filed as 4 CSR 265-10.020. Emergency rule filed June 14, 1985, effective July 1, 1985, expired Oct. 28, 1985. Original rule filed Aug. 1, 1985, effective Oct. 29, 1985. For intervening history, please consult the **Code of State Regulations**. Moved to 7 CSR 265-10.020, effective July 11, 2002. Emergency amendment filed Aug. 15, 2005, effective Aug. 26, 2005, expires Feb. 23, 2006. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 4—Conditions of Recipient Participation, Rights and Responsibilities

EMERGENCY AMENDMENT

13 CSR 70-4.050 Copayment and Coinsurance for Certain Medicaid-Covered Services. The division is amending sections (1), (3), (6), (8), (9), (10), (11), (12) and deleting section (7) and adding new sections (13), (14), (15) and (16).

PURPOSE: This amendment changes the copayment due from Medicaid recipients for physician-related services and hospital outpatient clinic or emergency room services.

EMERGENCY STATEMENT: The 93rd Missouri General Assembly truly agreed and finally passed Senate Substitute for Senate Bill 539. The governor signed Senate Bill 539. Senate Bill 539 is effective August 28, 2005. A proposed amendment, which covers the same material to change the copayment due from Medicaid recipients for physician-related services and hospital outpatient clinic or emergency room services, was published in the June 15, 2005 issue of the ***Missouri Register*** *(30 MoReg 1350–1353). The order of rulemaking for the proposed amendment, with changes resulting from comments sent to the Division of Medical Services during the thirty (30)-day comment period, was filed with the Joint Committee on Administrative Rules on August 3, 2005. The proposed amendment will not be effective September 1, 2005 when the Department of Social Services, Division of Medical Services is required by Senate Bill 539 and House Bill 11 to implement the program changes to copayments due from Medicaid recipients for physician-related services and hospital outpatient clinic or emergency room services. This emergency amendment is necessary to implement Senate Bill 539 and House Bill 11 as passed by the Missouri General Assembly and signed by the governor. The changes to Medicaid copayments due from Medicaid recipients for physician-related services and hospital outpatient clinic or emergency room services are estimated to save the Missouri Medicaid program approximately twenty-three (23) million dollars annually. The scope of this emergency amendment is limited to the circumstance creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 11, 2005, effective September 1, 2005, expires February 27, 2006.*

(1) Recipients eligible to receive Missouri Medicaid services under certain program areas shall be required to pay a small portion of the costs of the services. The services to be affected by the copayment or coinsurance requirements are—

(A) *[All audiological services and hearing aids provided through the Audiology Program]* **Dental services related to trauma or the treatment of a disease/medical condition**;

(B) *[All dental services and dentures provided through the Dental Program]* **Optical services related to trauma or the treatment of a disease/medical condition, and one (1) eye exam every two (2) years**;

(C) *[All optometric services, eyeglasses and artificial eyes provided through the Optical Program]* **Podiatry services provided through the podiatry program**;

(D) *[All podiatry services provided through the Podiatry Program]* **Inpatient hospital services**;

(E) *[Inpatient hospital services;]* **Hospital outpatient clinic/emergency room services; and**

(F) *[Outpatient hospital clinic/emergency room services; and]* **All physician-related services.**

[(G) Physician services rendered in a hospital outpatient clinic or emergency room.]

(3) Copayment charged shall be in accordance with 42 CFR 447.54 and, applicable to the services described in subsections (1)(A), (B) (excepting dentures), (C) *[and]***,** (D), **and (G),** based on the following schedule:

Medicaid Payment for Each Item of Service	**Recipient Copayment Amount**
$*[10.99]* **10** or less	$0.50
$*[11.00]* **10.01**–$25*[.99]*	$1.00
$*[26.00]* **25.01**–$50*[.99]*	$2.00
$*[51.00]* **50.01** or more	$3.00

(6) Co-payment to be charged for hospital outpatient clinic or emergency room services shall be *[two dollars ($2)]* **three dollars ($3)** for each date of service on which the recipient receives, either one (1) or both, outpatient clinic or emergency room services.

[(7) Co-payment to be charged for physician services provided in a hospital outpatient clinic or emergency room shall be one dollar ($1) for each date of service on which the recipient receives these services.]

[(8)] **(7)** *[With noted exceptions, t]***T**he following *[exemptions to the copayment requirement apply to the services described in subsections (1)(A)–(G)]* **is a list of exemptions to the Medicaid copayment requirement**:

(A) Services provided *[on or after December 1, 1984]* to recipients under *[eighteen (18)]* **nineteen (19)** years of age;

(B) Services **provided** to recipients residing within a skilled nursing *[home]* **facility**, an intermediate care *[nursing home]* **facility**, a residential care *[home]* **facility**, an adult boarding home or a psychiatric hospital;

(C) Services **provided** to recipients who have both Medicare and Medicaid entitlement if Medicare covers the service and provides payment for it;

(D) Emergency or transfer inpatient hospital admissions;

(E) Emergency services provided in an outpatient clinic or emergency room, *[such as—heart attack, hemorrhaging, poisoning, concussion, bone fractures or stroke;]* **after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:**

1. Placing the patient's health in serious jeopardy;

2. Serious impairment to bodily functions; or

3. Serious dysfunction of any bodily organ or part.

(F) Certain therapy services (physical therapy, chemotherapy, radiation therapy, psychotherapy and chronic renal dialysis) except when provided as an inpatient hospital service;

(G) Family planning services;

(H) Services provided to pregnant women *[which are directly related to the pregnancy or a complication of the pregnancy]*;

(I) Services provided to foster care recipients; *[and]*

(J) **Services identified as medically necessary through an** Early Periodic Screening, Diagnosis and Treatment **(EPSDT)** *[services.]* **screen;**

(K) Services provided through MC+ Managed Care Contracts;

(L) Personal Care services;

(M) Mental Health services;

(N) Services provided to the blind;

(O) Hospice services; and

(P) Medicaid waiver services.

[(9)] **(8) Providers are responsible for collecting the copayment or coinsurance amounts from individuals. The medical assistance program shall not increase its reimbursement to a provider to offset an uncollected copayment from a recipient. A provider shall collect a copayment from a recipient at the time each service is provided or at a later date.** Providers of services as described in this rule and as subject to a copayment or coinsurance requirement

may not deny or reduce services otherwise eligible for Medicaid benefits on the basis of the recipient's inability to pay the due copayment or coinsurance amount when charged.

[(10)] **(9)** A recipient's inability to pay a required coinsurance or copayment amount, as due and charged when a service is delivered, in no way shall extinguish the recipient liability to pay the due amount **or prevent a provider from attempting to collect a copayment**.

[(11)] **(10)** Participation privileges in the Medicaid program shall be limited to providers who accept, as payment in full, the amounts paid by the state agency plus any coinsurance or copayment amount required of the recipient.

[(12)] **(11)** Providers of services in the program areas named must charge copayment or coinsurance as specified at the time the service is provided to retain their participation privileges in the Missouri Medicaid program.

[(13)] **(12)** Providers must maintain records of copayment or coinsurance amounts for five (5) years and must make those records available to the Department of Social Services upon request.

(13) If it is the routine business practice of a provider to discontinue future services to an individual with uncollected debt, the provider may include uncollected copayments under this practice.

(14) A provider shall give a Medicaid recipient a reasonable opportunity to pay an uncollected copayment.

(15) A provider shall give a Medicaid recipient with uncollected debt advanced notice and a reasonable opportunity to arrange care with a different provider before services can be discontinued.

(16) If a provider is not willing to provide services to a recipient with uncollected copayments and the requirements of this regulation have been met, the provider may discontinue future services to an individual with uncollected copayments. In accordance with 42 *Code of Federal Regulations* (CFR) 431.51, a recipient may obtain services from any qualified provider who is willing to provide services to that particular recipient and accept their ability/inability to pay the required copayments.

*AUTHORITY: sections [207.020] **208.152**, RSMo [1986] **Supp. 2004 and 208.215 as enacted by the 93rd General Assembly and 208.201, RSMo 2000**. This rule was previously filed as 13 CSR 40-81.054. Emergency rule filed Oct. 21, 1981, effective Nov. 1, 1981, expired Feb. 10, 1982. Original rule filed Oct. 21, 1981, effective Feb. 11, 1982. For intervening history, please consult the **Code of State Regulations**. Amended: Filed May 16, 2005. Emergency amendment filed Aug. 11, 2005, effective Sept. 1, 2005, expires Feb. 27, 2006.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 4—Conditions of Recipient Participation, Rights and Responsibilities

EMERGENCY AMENDMENT

13 CSR 70-4.080 Children's Health Insurance Program. The division is amending sections (1), (5) through (9), and (13) through (15), adding a new section (10), and deleting sections (11) and (12).

PURPOSE: This amendment changes the copayment and premium requirements of the Children's Health Insurance Program pursuant to Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005. The amendment also changes the waiting period for coverage of any child identified as having special health care needs pursuant to House Bill 1453 enacted by the 92nd General Assembly, 2004.

*EMERGENCY STATEMENT: The 93rd Missouri General Assembly truly agreed and finally passed Senate Substitute for Senate Bill 539. The governor signed Senate Bill 539. Senate Bill 539 is effective August 28, 2005. A proposed amendment, which covers the same material to change the copayment and premium requirements of the Children's Health Insurance Program, was published in the June 1, 2005 issue of the **Missouri Register** (30 MoReg 1131–1136). The order of rulemaking for the proposed amendment with changes resulting from comments sent to the Division of Medical Services during the thirty (30)-day comment period was filed with the Joint Committee on Administrative Rules on July 22, 2005. The proposed amendment will not be effective September 1, 2005 when the Department of Social Services, Division of Medical Services is required by Senate Bill 539 and House Bill 11 to implement the program changes to the copayments and premium requirements of the Children's Health Insurance Program. This emergency amendment is necessary to implement Senate Bill 539 and House Bill 11 as passed by the Missouri General Assembly and signed by the governor. The changes to the copayment and premium requirements of the Children's Health Insurance Program are estimated to save the Missouri Medicaid program approximately $23,181,000 annually. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 11, 2005, effective September 1, 2005, expires February 27, 2006.*

(1) Definitions.

[(A) Available income. For the purpose of this rule available income shall be defined as the household's total gross income compared to one hundred eighty-five percent (185%), two hundred twenty-five percent (225%) and three hundred percent (300%) of the federal poverty level for the household size.

(B) Cost sharing. Payment of co-payments and premiums.]

[(C)] **(A)** Children. Persons up to nineteen (19) years of age.

[(D)] **(B)** Health insurance. Any hospital and medical expense incurred policy, nonprofit health care service for benefits other than through an insurer, nonprofit health care service plan contract, health maintenance organization subscriber contract, preferred provider arrangement or contract, or any other similar contract or agreement for the provision of health care benefits. The term "health insurance" does not include short-term, accident, fixed indemnity, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(5) Parent(s) and guardian(s) of uninsured children with *[available]* **gross** income above *[two hundred twenty-five percent (225%)]* **one hundred fifty percent (150%)** and below three hundred percent (300%) of the federal poverty level must certify, as a part of the application process, that the child does not have access to affordable employer-sponsored health insurance or other affordable health insurance available to the parent(s) or guardian(s) through their association with an identifiable group (for example, a trade association,

union, professional organization) or through the purchase of individual health insurance coverage.

[(6) An uninsured child/children with available income less than two hundred twenty-six percent (226%) of the federal poverty level shall be eligible for service(s) from the date the application is received. No service(s) will be covered prior to the date the application is received or September 1, 1998, whichever is later.]

[(7)] **(6)** An uninsured child/children with *[available]* **gross** income above *[two hundred twenty-five percent (225%)]* **one hundred fifty percent (150%)** and below three hundred percent (300%) of the federal poverty level shall be eligible for service(s) thirty (30) calendar days after the application is received if the required premium has been received.

(A) Parent(s) or guardian(s) of uninsured children with *[available]* **gross** income above *[two hundred twenty-five percent (225%)]* **one hundred fifty percent (150%)** and below *[three hundred percent (300%) of the federal poverty level are responsible for a monthly premium equal to the statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan]* **one hundred eighty-six percent (186%) of the federal poverty level are responsible for a monthly premium equal to the statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan not to exceed one percent (1%) of the family's gross income. Parent(s) or guardian(s) of uninsured children with gross income above one hundred eighty-five percent (185%) and below two hundred twenty-six percent (226%) of the federal poverty level are responsible for a monthly premium equal to the statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan not to exceed three percent (3%) of the family's gross income. Parent(s) or guardian(s) of uninsured children with gross income above two hundred twenty-five (225%) and below three hundred percent (300%) of the federal poverty level are responsible for a monthly premium equal to the statewide weighted average child/children premium required by the Missouri Consolidated Health Care Plan not to exceed five percent (5%) of the family's gross income.**

(B) The premium must be paid prior to service delivery.

(C) The premium notice shall include information on what to do if there is a change in *[available]* **gross** income.

(D) No service(s) will be covered prior to the effective date which is thirty (30) calendar days after the date the application is received.

[(8)] **(7)** If the parent or guardian discontinues payment of premiums, a past due notice shall be sent requesting remittance within twenty (20) calendar days from date of the letter. Failure to make payment shall result in the child's ineligibility for coverage for the following six (6) months.

[(9)] **(8)** Premium adjustments, based on changes in the Missouri Consolidated Health Care Plan, shall be calculated yearly in March with an effective date of July 1 of the same calendar year. Individuals shall be notified of the change in premium amount at least thirty (30) days prior to the effective date.

[(10)] **(9)** The six (6)-month waiting period and thirty (30)-calendar-day delay in service delivery is not applicable to a child/children already participating in the program when the parent's or guardian's income changes. Coverage shall be extended for thirty (30) calendar days to allow for premium collection and to ensure continuity in coverage. Eligibility shall be discontinued for the child/children if the premium payment is not made within the thirty (30)-day extension.

(10) Any child identified as having "special health care needs," defined as a condition which left untreated would result in the death or serious physical injury of a child, who does not have access to affordable employer-subsidized health care insurance shall not be required to be without health care coverage for six (6) months in order to be eligible for services under sections 208.631 to 208.657, RSMo and shall not be subject to the thirty (30)-day waiting period required under section 208.646, RSMo, as long as the child meets all other qualifications for eligibility.

[(11) Parent(s) or guardian(s) of uninsured children with available income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level are responsible for a co-payment at the time of professional service and for prescriptions.

(A) The co-payment is equal to the co-payment required by the Missouri Consolidated Health Care Plan.

(B) Co-payment adjustments, based on changes in the Missouri Consolidated Health Care Plan, shall be calculated yearly in March with an effective date of July 1 of the same calendar year.

(C) Individuals shall be notified of change(s) in the co-payment amount(s) at least thirty (30) days prior to the effective date.

(D) Providers may require payment of the co-payment prior to service delivery and service may be denied for failure to make co-payment. No co-payments shall be required for well-baby and well-child care including age-appropriate immunizations.

(12) Parent(s) or guardian(s) of uninsured children with income above one hundred eighty-five percent (185%) and at or below two hundred twenty-five percent (225%) of the federal poverty level for the household size are responsible for a five-dollar ($5) copayment at the time of professional service. Providers may require payment of the co-payment prior to service delivery and may deny services for failure to make co-payment. No co-payments shall be required for well-baby and well-child care including age-appropriate immunizations.]

[(13)] **(11)** The total aggregate *[cost-sharing]* **premiums** for a family covered by this rule shall not exceed five percent (5%) of the family's *[available]* **gross** income for a twelve (12)-month period of coverage beginning with the first month of service eligibility. *[Families responsible for cost-sharing shall be notified of their maximum liability for the twelve (12)-month period following service eligibility. When the total aggregate cost-sharing has reached five percent (5%) of the family's available income all co-payments and premiums shall be waived for the remainder of the twelve (12)-month period. Waiver in cost-sharing shall be made upon notification and documentation of co-payments from the family that payments have been made up to five percent (5%) of their yearly available income.]*

(A) The total aggregate premiums for a family covered by this rule with gross income above one hundred fifty percent (150%) and below one hundred eighty-six percent (186%) of the federal poverty level shall not exceed one percent (1%) of the family's gross income for a twelve (12)-month period of coverage beginning with the first month of service eligibility. When the total aggregate premiums have reached one percent (1%) of the family's gross income all premiums shall be waived for the remainder of the twelve (12)-month period. Waiver of premiums shall be made upon notification and documentation from the family that payments for premiums have been made up to one percent (1%) of their yearly gross income.

(B) The total aggregate premiums for a family covered by this rule with gross income above one hundred eighty-five percent (185%) and below two hundred twenty-six percent (226%) of the

federal poverty level shall not exceed three percent (3%) of the family's gross income for a twelve (12)-month period of coverage beginning with the first month of service eligibility. When the total aggregate premiums have reached three percent (3%) of the family's gross income all premiums shall be waived for the remainder of the twelve (12)-month period. Waiver of premiums shall be made upon notification and documentation from the family that payments for premiums have been made up to three percent (3%) of their yearly gross income.

(C) The total aggregate premiums for a family covered by this rule with gross income above two hundred twenty-five percent (225%) and below three hundred percent (300%) of the federal poverty level shall not exceed five percent (5%) of the family's gross income for a twelve (12)-month period of coverage beginning with the first month of service eligibility. When the total aggregate premiums have reached five percent (5%) of the family's gross income all premiums shall be waived for the remainder of the twelve (12)-month period. Waiver of premiums shall be made upon notification and documentation from the family that payments for premiums have been made up to five percent (5%) of their yearly gross income.

[(14)] **(12)** Parents of uninsured children must certify that their total net worth does not exceed two hundred fifty thousand dollars ($250,000) to be eligible for health insurance under this rule.

[(15)] **(13)** For the purposes of this rule, children participating in the Missouri Health Insurance Pool and child/children whose annual maximum benefits on a particular medical service under their private insurance have been exhausted are considered insured. Child/children whose parent(s) or guardian(s) drop Missouri Health Insurance Pool coverage in order to qualify under this rule shall not be eligible for six (6) months from the month coverage was terminated.

*AUTHORITY: sections 208.633, 208.636, 208.640, 208.643, 208.646, 208.650, 208.655, 208.657 and [208.660, RSMo Supp. 1998 and] 208.201, RSMo [1994] **2000, and** 208.631 **and 208.647, RSMo Supp. 2004**. Original rule filed July 15, 1998, effective Feb. 28, 1999. Amended: Filed April 29, 2005. Emergency amendment filed Aug. 11, 2005, effective Sept. 1, 2005, expires Feb. 27, 2006.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 4—Conditions of Recipient Participation, Rights and Responsibilities

EMERGENCY RULE

13 CSR 70-4.110 Placement of Liens on Property of Certain Institutionalized Medicaid Eligible Persons

PURPOSE: This rule implements the guidelines for placement of liens on the property of certain institutionalized Medicaid eligible persons, in accordance with the authority given to states in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), as amended.

*EMERGENCY STATEMENT: The 93rd Missouri General Assembly truly agreed and finally passed Senate Substitute for Senate Bill 539. The governor signed Senate Bill 539. Senate Bill 539 is effective August 28, 2005. A proposed rule, which covers the same material as this emergency rule to implement the guidelines for placement of liens on the property of certain institutionalized Medicaid eligible persons, in accordance with the authority given to states in the federal Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), as amended, was published in the June 15, 2005 issue of the **Missouri Register** (30 MoReg 1354–1356). No comments were received on the rule. The order of rulemaking for the proposed rule was filed with the Joint Committee on Administrative Rules on July 22, 2005. The proposed rule will not be effective September 1, 2005 when the Department of Social Services, Division of Medical Services is required by Senate Bill 539 and House Bill 11 to place liens on the property of certain institutionalized Medicaid eligible persons, in accordance with the authority given to states in the federal Tax Equity and Fiscal Responsibility Act of 1982, as amended. This emergency amendment is necessary to implement Senate Bill 539 and House Bill 11 as passed by the Missouri General Assembly and signed by the governor. The liens on the property of certain institutionalized Medicaid eligible persons, in accordance with the authority given to states in the federal Tax Equity and Fiscal Responsibility Act of 1982, as amended are estimated to save the Missouri Medicaid program approximately one hundred thousand dollars ($100,000) in the aggregate over the first two (2) years of the rule. In following years the medical assistance program will recover approximately one (1) million dollars a year from property with these liens annually. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 15, 2005, effective September 1, 2005, expires February 27, 2006.*

(1) When an applicant for Medicaid or a Medicaid recipient is a patient, or will become a patient, in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, the Department of Social Services will determine if the placement of a lien against the property of the applicant or recipient is applicable. A lien is imposed on the property of an individual, in accordance with the authority given states in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), when:

(A) The Medicaid recipient is or has made application to become a patient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution, to spend for costs of medical care all but a minimal amount of his income required for personal needs;

(B) The institutionalized Medicaid recipient owns property. Property includes the homestead and all other real property in which the person has a sole legal interest or a legal interest based upon co-ownership of the property which is the result of a transfer of property for less than fair market value within thirty-six (36) months prior to the person entering the nursing facility;

(C) The department has determined after notice and opportunity for hearing that there is no reasonable expectation that the person can be discharged from the facility within one hundred twenty (120) days and return home. The hearing, if requested, will proceed under the provision of Chapter 536, RSMo, before a hearing officer designated by the director of the Department of Social Services. The fact that there is no reasonable expectation that the person can be discharged from the facility within one hundred twenty (120) days and return home may be substantiated by one (1) of the following:

1. Applicant/recipient states in writing that he/she does not intend to return home within one hundred twenty (120) days;

2. Applicant/recipient has been in the institution for longer than one hundred twenty (120) days; and

3. A physician states in writing that the applicant/recipient cannot be expected to be discharged within one hundred twenty (120) days of admission; and

(D) A lien is imposed on the property unless one (1) of the following persons lawfully resides in the property:

1. The institutionalized person's spouse;

2. The institutionalized person's child who is under twenty-one (21) years of age or is blind or permanently and totally disabled;

3. The institutionalized person's sibling who has an equity interest in the property and who was residing in such individual's home for a period of at least one (1) year immediately before the date of the individual's admission to the institution.

(2) After determining the applicability of the lien, the Medicaid recipient is given an Explanation of TEFRA Lien. A person who objects to the imposition of a lien is ineligible for medical assistance. Ineligibility is based on the person's objection without good cause to the imposition of the lien, which impedes the department's ability to implement its lien requirements.

(3) The director of the department or the director's designee will file for record, with the recorder of deeds of the county in which any real property is situated, a written Certificate of TEFRA Lien. The lien will contain the name of the Medicaid recipient and a description of the property. The recorder will note the time of receiving such notice and will record and index the certificate of lien in the same manner as deeds of real estate are required to be recorded and indexed. The county recorder shall be reimbursed by presenting a statement showing the number of certificates and releases filed each calendar quarter to the Department of Social Services.

(4) The TEFRA lien will be for the debt due the state for medical assistance paid or to be paid on behalf of the Medicaid recipient. The amount of the lien will be for the full amount due the state at the time the lien is enforced. Fees paid to county records of deeds for filing of the lien will be included in the amount of the lien.

(5) The TEFRA lien does not affect ownership interest in a property until it is sold, transferred, or leased, or upon the death of the individual, at which time the lien must be satisfied.

(6) The lien will be dissolved in the event the individual is discharged from the institution and returns home. A Notice of TEFRA Lien Release will be filed within thirty (30) days with the recorder of deeds of the county in which the original Certificate of TEFRA Lien was filed.

AUTHORITY: sections 208.201, RSMo 2000 and 208.215 as enacted by the 93rd General Assembly. Original rule filed May 16, 2005. Emergency rule filed Aug. 15, 2005, effective Sept. 1, 2005, expires Feb. 27, 2006.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 40—Optical Program

EMERGENCY AMENDMENT

13 CSR 70-40.010 Optical Care Benefits and Limitations—Medicaid Program. The Division of Medical Services is amending sections (1), (2), and (7).

PURPOSE: This amendment updates the Department of Social Services, Division of Medical Services Internet address and revises the eye examination benefit to every two (2) years and eliminates coverage of eyeglasses for all recipients who are not eligible needy children, pregnant women or blind persons as approved through Senate Bill 539 enacted by the 93rd General Assembly.

*EMERGENCY STATEMENT: The 93rd Missouri General Assembly truly agreed and finally passed Senate Substitute for Senate Bill 539. The governor signed Senate Bill 539. Senate Bill 539 is effective August 28, 2005. A proposed amendment, which covers the same material to amend the optical care benefits and limitation of the Medicaid program, was published in the July 1, 2005 issue of the **Missouri Register** (30 MoReg 1448–1449). No written comments were received during the thirty (30)-day public comment period. The proposed amendment will not be effective September 1, 2005 when the Department of Social Services, Division of Medical Services is required by Senate Bill 539 and House Bill 11 to implement the program changes to limit the eye examination benefit to every two (2) years for all Medicaid recipients who are not eligible needy children, pregnant women or blind persons and eliminate coverage of eyeglasses for all recipients who are not eligible needy children, pregnant women or blind persons. The changes to the Medicaid optical program are estimated to save the Missouri Medicaid program approximately $7,754,000 annually. This emergency amendment is necessary to implement Senate Bill 539 and House Bill 11 as passed by the Missouri General Assembly and signed by the governor. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 11, 2005, effective September 1, 2005, expires February 27, 2006.*

(1) Administration. The Optical Care program shall be administered by the **Department of Social Services,** Division of Medical Services*[, Department of Social Services]*. The optical care services covered and not covered, the program limitations and the maximum allowable fees for all covered services shall be determined by the Division of Medical Services and shall be made available through the Department of Social Services, Division of Medical Services website at *[www.dss.state.mo.us/dms]* **www.dss.mo.gov/dms**, provider bulletins, and updates to the provider manual. Services covered shall include only those which are clearly shown to be medically necessary.

(2) Persons Eligible. Any person who is eligible for Title XIX benefits from the **Family Support** Division *[of Family Services]* and who is found to be in need of optical care services as described in this regulation **subject to the limitations set forth in subsections (7)(A)–(Y)**.

(7) Program Limitations.

(A) One (1) comprehensive or one (1) limited eye examination is allowed per **two (2)** years (within a *[twelve (12)-]***twenty-four (24)-**month period of time) under the Medicaid program. **Eligible needy children, pregnant women, and blind persons are allowed one (1) comprehensive or one (1) limited eye examination per year (within a twelve (12)-month period of time) under the Medicaid program.** Payment for a comprehensive eye examination will be made only if six (6) or more of the following procedures have been performed:

1. Refraction far point and near point;
2. Case history;
3. Visual acuity testing;
4. External eye examination;
5. Pupillary reflexes;
6. Ophthalmoscopy;
7. Ocular motility testing;
8. Binocular coordination;
9. Vision fields;
10. Biomicroscopy (slit lamp);
11. Tonometry;
12. Color vision; and
13. Depth perception.

(C) **Eligible needy children, pregnant women, and blind persons may be allowed** *[A]***a**dditional eye examinations *[may be allowed]* during the year (within a twelve (12)-month period of time) if medically necessary (that is, cataract examination, prescription change of 0.50 diopters or greater). A Medical Necessity Form must

be *[attached to the claim form]* **completed** for eye examinations in excess of one (1) per year.

(D) Eyeglasses are **only** covered by Medicaid **for eligible needy children, pregnant women, and blind persons** when the prescription is at least 0.75 diopters for one (1) eye or 0.75 diopters for each eye. **Eyeglasses (any type of frame and/or lens) are not covered for any other Medicaid eligibles.**

(E) Only one (1) pair of eyeglasses is allowed every two (2) years (within any twenty-four (24)-month period of time) for *[all Medicaid recipients]* **eligible needy children, pregnant women, and blind persons** regardless of age.

AUTHORITY: sections 208.152, ***RSMo Supp. 2004,*** *208.153 and 208.201, RSMo 2000,* ***and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005.*** *This rule was previously filed as 13 CSR 40-81.170. Emergency rule filed April 10, 1981, effective April 20, 1981, expired July 10, 1981. Original rule filed April 10, 1981, effective July 11, 1981. Emergency amendment filed June 27, 2002, effective July 7, 2002, terminated Feb. 23 2003. Amended: Filed July 15, 2002, effective Feb. 28, 2003. Amended: Filed March 3, 2003, effective Oct. 30, 2003. Amended: Filed June 1, 2005. Emergency amendment filed Aug. 11, 2005, effective Sept. 1, 2005, expires Feb. 27, 2006.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 45—Hearing Aid Program

EMERGENCY AMENDMENT

13 CSR 70-45.010 Hearing Aid Program. The Division of Medical Services is amending section (2) and deleting the form which follows the rule in the *Code of State Regulations*.

PURPOSE: This amendment eliminates hearing aid services for individuals who are not Medicaid eligible needy children or receiving Medicaid under a category of assistance for pregnant women or the blind as approved through Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly.

EMERGENCY STATEMENT: The 93rd Missouri General Assembly truly agreed and finally passed Senate Substitute for Senate Bill 539. The governor signed Senate Bill 539. Senate Bill 539 is effective August 28, 2005. A proposed amendment, which covers the same material to eliminate coverage of hearing aid services for individuals who are not Medicaid eligible needy children or receiving Medicaid under a category of assistance for pregnant women or blind persons, was published in the August 1, 2005 issue of the ***Missouri Register*** *(30 MoReg 1649–1650). The proposed amendment will not be effective September 1, 2005 when the Department of Social Services, Division of Medical Services is required by Senate Bill 539 and House Bill 11 to implement the program changes to eliminate coverage of hearing aid services for individuals who are not Medicaid eligible needy children or receiving Medicaid under a category of assistance for pregnant women or blind persons. The changes to the Medicaid hearing aid program are estimated to save the Missouri Medicaid program approximately 1.6 million dollars annually. This emergency amendment is necessary to implement Senate Bill 539 and House Bill 11 as passed by the Missouri General Assembly and signed by the governor. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 11, 2005, effective September 1, 2005, expires February 27, 2006.*

(2) *[Eligibility]* **Persons Eligible**. *[Any person who is eligible for Title XIX benefits as determined by the Division of Family Services and who is found to be in need in accordance with the procedures listed in section (5) is eligible for a hearing aid.]* **The Missouri Medicaid Program pays for approved Medicaid services for hearing aid services when furnished within the provider's scope of practice to Medicaid eligible needy children or persons receiving Medicaid under a category of assistance for pregnant women or the blind. The recipient must be eligible on the date the service is furnished. Recipients may have specific limitations for hearing aid services according to the type of assistance for which they have been determined eligible. It is the provider's responsibility to determine the coverage benefits for a recipient based on their type of assistance as outlined in the provider program manual. The provider shall ascertain the patient's Medicaid/MC+ and managed care or other lock-in status before any service is performed. The recipient's eligibility shall be verified in accordance with methodology outlined in the provider program manual.**

AUTHORITY: sections 208.153[, RSMo 1986] and 208.201, RSMo [Supp. 1988] ***2000, and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005****. This rule was previously filed as 13 CSR 40-81.120. Emergency rule filed June 1, 1979, effective June 11, 1979, expired Sept. 13, 1979. Original rule filed June 1, 1979, effective Sept. 14, 1979. Emergency amendment filed April 10, 1981, effective April 20, 1981, expired July 10, 1981. Amended: Filed April 10, 1981, effective July 11, 1981. Rescinded and readopted: Filed July 18, 1989, effective March 1, 1990. Amended: Filed June 29, 2005. Emergency amendment filed Aug. 11, 2005, effective Sept. 1, 2005, expires Feb. 27, 2006.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 60—Durable Medical Equipment Program

EMERGENCY AMENDMENT

13 CSR 70-60.010 Durable Medical Equipment Program. The Division of Medical Services is amending the Purpose and sections (1), (2), (6), and (8).

PURPOSE: This amendment eliminates coverage of certain items of durable medical equipment for individuals who are not Medicaid eligible needy children or receiving Medicaid under a category of assistance for pregnant women or the blind.

PURPOSE: This rule establishes the regulatory basis for the administration of the Medicaid durable medical equipment program, designation of professional persons who may dispense durable medical equipment and the method of reimbursement for durable medical equipment. This rule provides for such methods and procedures relating to the utilization of, and the payment for, care and services available under the Medicaid program as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. Specific details of the conditions for provider participation, criteria and methodology of provider reimbursement, recipient eligibility and amount, duration and scope of services covered are included in the durable medical equipment provider program manual which is incorporated by reference in this rule and available at the website [www.medicaid.state.mo.us] **www.dss.mo.gov/dms**.

EMERGENCY STATEMENT: The 93rd Missouri General Assembly truly agreed and finally passed Senate Substitute for Senate Bill 539. The governor signed Senate Bill 539. Senate Bill 539 is effective August 28, 2005. A proposed amendment, which covers the same material to eliminate coverage of certain items of durable medical equipment for individuals who are not Medicaid eligible needy children or receiving Medicaid under a category of assistance for pregnant women or blind persons, was published in the July 15, 2005 issue of the ***Missouri Register*** *(30 MoReg 1566–1568). The proposed amendment will not be effective September 1, 2005 when the Department of Social Services, Division of Medical Services is required by Senate Bill 539 and House Bill 11 to implement the program changes to eliminate coverage of certain items of durable medical equipment for individuals who are not Medicaid eligible needy children or receiving Medicaid under a category of assistance for pregnant women or blind persons. The changes to the Medicaid durable medical equipment program are estimated to save the Missouri Medicaid program approximately 24.9 million dollars annually. This emergency amendment is necessary to implement Senate Bill 539 and House Bill 11 as passed by the Missouri General Assembly and signed by the governor. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 11, 2005, effective September 1, 2005, expires February 27, 2006.*

(1) Administration. The Medicaid durable medical equipment (DME) program shall be administered by the Department of Social Services, Division of Medical Services. The services and items covered and not covered, the program limitations and the maximum allowable fees for all covered services shall be determined by the Department of Social Services, Division of Medical Services and shall be included in the DME provider manual, which is incorporated by reference *[in]* **and made a part of** this rule *[and available through]* **as published by** the Department of Social Services, Division of Medical Services**, 615 Howerton Court, Jefferson City, MO 65109 at its** website at *[www.medicaid.state.mo.us. The division reserves the right to affect changes in services, limitations and fees with notification to DME providers.]* **www.dss.mo.gov/dms, July 15, 2005. This rule does not incorporate any subsequent amendments or additions.**

(2) Persons Eligible. Any person who is eligible for Title XIX benefits as determined by the **Family Support** Division *[of Family Services]* is eligible for DME when the DME is medically necessary as determined by the treating physician or advanced practice nurse in a collaborative practice arrangement. **Covered services are limited as specified in section (6) of this rule.**

(6) Covered Services. It is the provider's responsibility to determine the coverage benefits for a Medicaid eligible recipient based on his or her type of assistance as outlined in the DME manual. Reimbursement will be made to qualified participating DME providers only for DME items, determined by the recipient's treating physician or advanced practice nurse in a collaborative practice arrangement to be medically necessary*[, and]***. Covered services include the following items: prosthetics, excluding an artificial larynx; ostomy supplies; diabetic supplies and equipment; oxygen and respiratory equipment, excluding CPAPs, BiPAPs, nebulizers, IPPB machines, humidification items, suction pumps and apnea monitors; and wheelchairs, excluding wheelchair accessories and scooters. Covered services for Medicaid eligible needy children or persons receiving Medicaid under a category of assistance for pregnant women or the blind** shall include but not be limited to: prosthetics; orthotics; oxygen and respiratory care equipment; parenteral nutrition; ostomy supplies; **diabetic supplies and equipment;** ***decubitus*** **care equipment;** wheelchairs; **wheelchair accessories and scooters;** augmentative communication devices; and hospital beds. Specific procedure codes that are covered under the DME program are listed in Section 19 of the DME provider manual, which is incorporated by reference *[in]* **and made a part of** this rule **as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/dms, July 15, 2005. This rule does not incorporate any subsequent amendments or additions**. These items must be for use in the recipient's home when ordered in writing by the recipient's physician or advanced practice nurse in a collaborative practice arrangement. Although an item is classified as DME, it may not be covered in every instance. Coverage is based on the fact that the item is reasonable and necessary for treatment of the illness or injury, or to improve the functioning of a malformed or permanently inoperative body part and the equipment meets the definition of DME. Even though a DME item may serve some useful, medical purpose, consideration must be given by the physician or advanced practice nurse in a collaborative arrangement and the DME supplier to what extent, if any, it is reasonable for Medicaid to pay for the item as opposed to another realistically feasible alternative pattern of care. Consideration should be given by the physician or advanced practice nurse in a collaborative practice arrangement and the DME supplier as to whether the item serves essentially the same purpose as equipment already available to the recipient. If two (2) different items each meet the need of the recipient, the less expensive item must be employed, all other conditions being equal.

(8) Durable medical equipment for recipients who are in a nursing facility or inpatient hospital. DME is not covered for those recipients residing in a nursing home. DME is included in the nursing home per diem rate and not paid for separately with the exception of *[augmentative communication devices,]* custom and power wheelchairs, *[orthotic and]* prosthetic devices, *[total parenteral nutrition,]* and volume ventilators. DME that is used while the recipient is in inpatient hospital care is not paid for separately under the DME program. These costs are recognized as part of the hospital's inpatient per diem rate.

AUTHORITY: sections 208.153 and 208.201, RSMo 2000, ***and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005****. Original rule filed Nov. 1, 2002, effective April 30, 2003. Amended: Filed June 15, 2005. Emergency amendment filed Aug. 11, 2005, effective Sept. 1, 2005, expires Feb. 27, 2006.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 90—Home Health Program

EMERGENCY AMENDMENT

13 CSR 70-90.010 Home Health-Care Services. The Division of Medical Services is amending sections (1), (2), and (4).

PURPOSE: This amendment eliminates coverage of physical, occupational and speech therapy for adult Medicaid recipients receiving those services through home health care who are not pregnant or blind as approved through Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005.

EMERGENCY STATEMENT: The 93rd Missouri General Assembly truly agreed and finally passed Senate Substitute for Senate Bill 539. The governor signed Senate Bill 539. Senate Bill 539 is effective August 28, 2005. A proposed amendment, which covers the same material to eliminate coverage of physical, occupational and speech

therapy for Medicaid recipients receiving those services through home health care who are not Medicaid eligible needy children or receiving Medicaid under a category of assistance for pregnant women or blind persons, was published in the July 1, 2005 issue of the ***Missouri Register*** *(30 MoReg 1450). The proposed amendment will not be effective September 1, 2005 when the Department of Social Services, Division of Medical Services is required by Senate Bill 539 and House Bill 11 to implement the program changes to eliminate coverage of physical, occupational and speech therapy for adult Medicaid recipients receiving those services through home health care who are not Medicaid eligible needy children or receiving Medicaid under a category of assistance for pregnant women or blind persons. The changes to the Medicaid home health care services program are estimated to save the Missouri Medicaid program approximately seven hundred fifty-one thousand three hundred forty-five dollars ($751,345). This emergency amendment is necessary to implement Senate Bill 539 and House Bill 11 as passed by the Missouri General Assembly and signed by the governor. The scope of this emergency amendment is limited to the circumstance creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 15, 2005, effective September 1, 2005, expires February 27, 2006.*

(1) An otherwise eligible Medicaid recipient is eligible for Medicaid reimbursement on his/her behalf for home health services if all the conditions of subsections (1)(A)–(D) are met—

(A) The recipient requires—

1. Intermittent skilled nursing care which is reasonable and necessary for the treatment of an injury or illness; **or**

2. Physical**,** *[or]* occupational **or speech** therapy **when the following conditions are met—**

A. The recipient is a needy child, pregnant woman or blind person; and

B. Physical, occupational or speech therapy is reasonable and necessary for restoration to an optimal level of functioning following an injury or illness, in accordance with limitations set forth in section (8) of this rule**.***[; or*

3. Speech therapy reasonable and necessary for restoration to an optimal level of functioning following an injury or illness, in accordance with limitations set forth in section (8) of this rule.]

(2) To qualify as skilled nursing care or as physical, occupational or speech therapy under paragraph*[s]* (1)(A)1.*[–3.]* **or subparagraph (1)(A)2.B.** and to be reimbursable under the Medicaid Home Health Program, a service must meet the following criteria:

(C) The service must constitute active treatment for an illness or injury and be reasonable and necessary. To be considered reasonable and necessary, services must be consistent with the nature and severity of the individual's illness or injury, his/her particular medical needs and accepted standards of medical practice. Services directed solely to the prevention of illness or injury will neither meet the conditions of paragraph*[s]* (1)(A)1.*[–3.]* **or subparagraph (1)(A)2.B.** nor be reimbursed by the Medicaid Home Health Program.

(4) Services included in Medicaid home health coverage are those set forth in paragraph*[s]* (1)(A)1.*[–3.]* **or subparagraph (1)(A)2.B.** and, in addition, the intermittent services of a home health aide and the provision of nonroutine supplies identified as specific and necessary to the delivery of a recipient's nursing care and prescribed in the plan of care. These additional services are covered only if all the conditions of subsections (1)(A)–(D) are met. Necessary items of durable medical equipment prescribed by the physician **as a part of the home health service** are available to recipients of home health services through *[the]* Medicaid *[Durable Medical Equipment Program]* subject to the limitations of amount, duration and scope where applicable. **The home health agency must coordinate with the durable medical equipment provider to ensure the durable medical equipment provider has a copy of the home health plan of care for provision of the durable medical equipment prescribed.**

AUTHORITY: sections 208.153 and 208.201, RSMo 2000, ***and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005****. This rule was previously filed as 13 CSR 40-81.056. Original rule filed April 14, 1982, effective July 11, 1982. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed June 1, 2005. Emergency amendment filed Aug. 15, 2005, effective Sept. 1, 2005, expires Feb. 27, 2006.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 99—Comprehensive Day Rehabilitation

EMERGENCY RULE

13 CSR 70-99.010 Comprehensive Day Rehabilitation Program

PURPOSE: This rule establishes the regulatory basis for the administration of the Comprehensive Day Rehabilitation Program. This rule provides for such methods and procedures relating to the utilization of, and the payment for, care and services available under the Medicaid program as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. Specific details of provider participation, criteria and methodology for provider reimbursement, recipient eligibility, and amount, duration, and scope of services covered are included in the Comprehensive Day Rehabilitation Program manual, which is incorporated by reference in this rule and available at the website www.dss.mo.gov/dms.

EMERGENCY STATEMENT: The 93rd Missouri General Assembly truly agreed and finally passed Senate Substitute for Senate Bill 539. The governor signed Senate Bill 539. Senate Bill 539 is effective August 28, 2005. A proposed rule, which covers the same material to establish the regulatory basis for the administration of the Medicaid Comprehensive Day Rehabilitation Program, was published in the July 1, 2005 issue of the ***Missouri Register*** *(30 MoReg 1451–1454). No written comments were received during the thirty (30)-day public comment period. The proposed amendment will not be effective September 1, 2005 when the Department of Social Services, Division of Medical Services is required by Senate Bill 539 and House Bill 11 to implement the program changes to limit the comprehensive day rehabilitation program to Medicaid recipients who are eligible needy children, pregnant women or blind persons. The changes to the Medicaid Comprehensive Day Rehabilitation Program are estimated to save the Missouri Medicaid program approximately one (1) million dollars annually. This emergency amendment is necessary to implement Senate Bill 539 and House Bill 11 as passed by the Missouri General Assembly and signed by the governor. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 11, 2005, effective September 1, 2005, expires February 27, 2006.*

(1) Administration. The Missouri Medicaid Comprehensive Day Rehabilitation Program shall be administered by the Department of Social Services, Division of Medical Services. The Comprehensive Day Rehabilitation services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the Division of Medical Services and shall be included in the Medicaid provider manuals, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109, at its website www.dss.mo.gov/dms, July 1, 2005. This rule does not incorporate any subsequent amendments or additions. Comprehensive Day Rehabilitation program shall include only those that are prior authorized by the Division of Medical Services.

(2) Persons Eligible. Prior authorized Comprehensive Day Rehabilitation services are covered for individuals with disabling impairments as the result of a traumatic head injury that are under the age of twenty-one (21), blind, or pregnant. The program provides intensive, comprehensive services designed to prevent or minimize chronic disabilities while restoring the individual to an optimal level of physical, cognitive, and behavioral function. Emphasis in the program is on functional living skills, adaptive strategies for cognition, memory or perceptual deficits, and appropriate interpersonal skills. The recipient must be eligible on the date the service is furnished. It is the provider's responsibility to determine the coverage benefits for a recipient based on their type of assistance as outlined in the Comprehensive Day Rehabilitation Program manual. The provider shall ascertain the patient's Medicaid/managed care status before any service is performed. The recipient's eligibility shall be verified in accordance with methodology outlined in the Comprehensive Day Rehabilitation Program manual.

(3) Provider Participation. To be eligible for participation in the Missouri Medicaid Comprehensive Day Rehabilitation Program, a provider must have the certificate of accreditation (CARF) from the Rehabilitation Accreditation Commission, employ and retain qualified/licensed head injury professionals qualified to render the services covered through the Comprehensive Day Rehabilitation Program, be a free standing rehabilitation center or in an acute hospital setting with space dedicated to head injury rehabilitation, and be an enrolled Medicaid provider.

(4) Prior Authorization. Comprehensive Day Rehabilitation services must be prior authorized by the Division of Medical Services in order for the provider to receive reimbursement. The request is reviewed by a medical consultant, and the provider is notified if the request is approved or, if not approved, the reason for denial. No more than six (6) months of services will be approved. It is possible to receive an additional six (6)-month authorization if the patient is showing progress toward treatment goals. The maximum period of Comprehensive Day Rehabilitation services covered is one (1) year.

(5) Covered Services. Comprehensive Day Rehabilitation Program services are covered for half-day (three (3) to four (4) hours) and full day (five (5) or more hours) units when the recipient meets the admission criteria and is prior authorized by the Division of Medical Services.

(6) Reimbursement. Payment will be made in accordance with the fee per unit of service as defined and determined by the Division of Medical Services. Providers must bill their usual and customary charge for Comprehensive Day Rehabilitation services. Reimbursement will not exceed the lesser of the maximum allowed amount determined by the Division of Medical Services or the provider's billed charges. Comprehensive Day Rehabilitation Program services are only payable to the enrolled, eligible, participating provider. The Medicaid program cannot reimburse for services performed by non-enrolled providers.

(7) Documentation Requirements for Comprehensive Day Rehabilitation Program.

(A) The following must be maintained in the recipient's clinical record:

1. Presenting complaint/request for assistance;
2. Relevant treatment history and background information;
3. Reported physical/medical/cognitive/psychological complaints;
4. Pertinent functional weaknesses and strengths;
5. Findings from formal assessments;
6. Plan of care;
7. Interview and behavioral observations;
8. Diagnostic formulation;
9. Recommendations for further evaluation and/or treatment needs; and
10. Dates of periodic review of the plan of care.

(8) Records Retention. These records must be retained for five (5) years from the date of service. Fiscal and medical records coincide with and fully document services billed to the Medicaid agency. Providers must furnish or make the records available for inspection or audit by the Department of Social Services or its representative upon request. Failure to furnish, reveal, or retain adequate documentation for services billed to the Medicaid program, as specified above, is a violation of this regulation.

AUTHORITY: sections 208.152, 208.471 and 208.631, RSMo Supp. 2004, 208.153, 208.164, 208.201, and 208.633, RSMo 2000, and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005. Original rule filed June 1, 2005. Emergency rule filed Aug. 11, 2005, effective Sept. 1, 2005, expires Feb. 27, 2006.

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register.* If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement of Livestock, Poultry and Exotic Animals

PROPOSED RULE

2 CSR 30 2.005 Vesicular Stomatitis Restrictions on Domestic and Exotic Ungulates (Hoofed Animals) Entering Missouri

PURPOSE: This rule is necessary to restrict the movement of ungulates (hoofed animals) into Missouri if Vesicular Stomatitis has been diagnosed in the United States.

(1) The following requirements will become effective immediately upon quarantine of any premises in the United States for Vesicular Stomatitis by the United States Department of Agriculture (USDA). These additional requirements will be lifted as soon as all affected premises are released from quarantine.

(A) In addition to all other requirements in 2 CSR 30-2 and 2 CSR 30-6, all domestic and exotic ungulates (hoofed animals) entering Missouri must be accompanied by a Certificate of Veterinary Inspection stating that—

1. "All animals identified on this Certificate of Veterinary Inspection, and included with this shipment, have been examined and found to be free from clinical signs of Vesicular Stomatitis, have not been exposed to Vesicular Stomatitis, and within the past thirty (30) days, have not been within ten (10) miles of any site under quarantine for Vesicular Stomatitis"; and

2. An entry permit is required and shall be listed on the Certificate of Veterinary Inspection for animals originating from states with active quarantines.

AUTHORITY: section 267.645, RSMo 2000. Emergency rule filed July 14, 1995, effective July 24, 1995, expired Nov. 20, 1995. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, Division of Animal Health, Shane Brookshire, D.V.M., State Veterinarian, PO Box 630, Jefferson City, MO 65102, by facsimile at (573) 751-6919 or via e-mail at Shane.Brookshire@mda.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register.*** *No public hearing is scheduled.*

Title *[4]* 7—DEPARTMENT OF *[ECONOMIC DEVELOPMENT]* *TRANSPORTATION*
Division 265—*[Division of]* Motor Carrier and Railroad Safety
Chapter 10—Motor Carrier Operations

PROPOSED AMENDMENT

[4] 7 **CSR 265-10.020 Licensing of Vehicles**. The commission is amending section (1) and subsections (1)(B), (1)(C), (1)(D), (1)(E), (1)(F), (1)(G), (1)(H) and (1)(I); section (2); section (3) and subsection (3)(C); section (4) and subsections (4)(B) and (4)(C); section (5) and subsections (5)(A) and (5)(E); section (6) and subsection (6)(B); and section (7) and subsections (7)(A) and (7)(B). and deleting the forms that follow this rule in the *Code of State Regulations*.

PURPOSE: This proposed amendment will eliminate the requirement that motor carriers who have properly registered their interstate operations, and have paid the Missouri regulatory license fee for each motor vehicle operated in interstate commerce within this state, must obtain and display an additional form of regulatory license when they operate the same vehicle in intrastate commerce. The rule currently requires interstate carriers to display a MoDOT license decal on each motor vehicle operated intrastate, in addition to the credentials they already must carry whenever they operate the same vehicle in Missouri interstate commerce. The amendment will not excuse any carriers from paying the same, annual, regulatory license fee of ten dollars ($10) for each motor vehicle operated in Missouri,

but merely eliminates the provisions that currently require carriers to obtain dual interstate and intrastate credentials for the same vehicle. The proposed amendment also updates the current rule's obsolete references to: (1) the Federal Highway Administration, whose former motor carrier regulatory duties have been reassigned to the Federal Motor Carrier Safety Administration instead; and (2) the "division," i.e., *the Division of Motor Carrier and Railroad Safety, whose former motor carrier regulatory duties have been transferred to the Missouri Highways and Transportation Commission, pursuant to Truly Agreed to and Finally Passed Senate Bill No. 1202, 91st General Assembly, 2nd Regular Session (effective July 11, 2002). In addition, the proposed amendment clarifies when MoDOT has discretion to replace regulatory license decals, stamps or registration receipts that are allegedly lost, stolen, damaged, destroyed, or removed from the vehicle.*

(1) No motor carrier shall operate any motor vehicle on the public highways in Missouri intrastate or interstate commerce under any property carrier registration, certificate or permit issued by the *[division]* **Missouri Highways and Transportation Commission**, unless the vehicle is accompanied by a valid regulatory license**,** which shall be carried or displayed on the vehicle in compliance with this rule. As used in this rule, the terms "regulatory license" and "license" include a license sticker (decal), license stamp, or registration receipt issued in compliance with this rule. Except as otherwise provided in this rule or the *Single State Registration System (SSRS) Procedures Manual*, **prepared by the National Conference of State Transportation Specialists, and published by the National Association of Regulatory Utility Commissioners, 1101 Vermont Avenue, N.W., Washington, DC 20005, (revised June 16, 2004),** which is incorporated by reference in this rule **and which does not incorporate any subsequent amendments,** the following requirements are applicable to all regulatory licenses, license fees and motor carriers within the jurisdiction of the *[division]* **commission**:

(B) Every application to the *[division]* **commission** for the issuance of regulatory licenses shall be accompanied by payment in conformity with the requirements of subsection (I) of this section, in the amount of the required regulatory license fees, which shall be as follows:

1. Annual license fee for each motor vehicle operated by a motor carrier on the public highways in Missouri, whether in intrastate commerce or interstate commerce, shall be ten dollars ($10); and

2. Seventy-two (72)-hour license fee for each motor vehicle operated by a motor carrier on the public highways in Missouri, either in intrastate commerce, or in interstate commerce transporting property or passengers exempt from the economic jurisdiction of the Federal *[Highway]* **Motor Carrier Safety** Administration *[(FHWA)]* **(FMCSA)**, shall be five dollars ($5);

(C) When a motor carrier has paid the annual regulatory license fee for a motor vehicle **used in interstate commerce and displays or carries the proper regulatory license as required**, and the carrier*['s use of that vehicle requires it to display or carry additional or different forms of regulatory licenses, then upon the carrier's application in conformity with the applicable provisions of this rule, the division shall issue to the motor carrier all the required forms of annual regulatory licenses for that vehicle without payment of any additional fee;]* **uses the vehicle in interstate commerce transporting property or passengers exempt from FMCSA economic jurisdiction, or in intrastate commerce, the provisions of this rule shall not require any additional payment or form of regulatory license;**

(D) The *[division]* **commission** shall issue regulatory licenses under this rule only to motor carriers authorized under valid property carrier registrations, certificates or permits issued by this *[division]* **commission**, to motor carriers who have registered their Interstate Commerce Commission **(**ICC**)** or *[FHWA]* **FMCSA** authority in compliance with the SSRS Procedures Manual, or to authorized employees or agents acting on behalf of these motor carriers. The motor carrier to whom these licenses are issued may use them as required in this rule for any motor vehicle operated under the carrier's property carrier registration, certificate or permit. However, the licenses shall not be transferable to any person or carrier other than the motor carrier's own employees, agents, or persons operating vehicles leased to or from the motor carrier in compliance with *[4]* **7** CSR 265-10.040, except that after a motor carrier has paid the required regulatory license fee and has attached a valid license sticker to a particular vehicle as provided in this rule, that license shall remain with the vehicle, and no motor carrier shall be required to pay another regulatory license fee for the use of that vehicle for that license year, unless the motor carrier elects to remove the license in conformity with the provisions of subsection (4)(C) of this rule;

(E) The *[division shall not]* **commission may** replace license stickers, stamps or registration receipts which the carrier claims have been lost, stolen, damaged, destroyed, or removed from the vehicle to which it was affixed, *[except upon receipt by the division of the full license fee as provided in this rule; except that]* upon receipt of a verified statement of the motor carrier or its authorized representative, declaring in detail the facts and circumstances under which the license sticker, stamp or registration receipt was lost, stolen, damaged or destroyed, or declaring that the motor carrier has removed the license sticker from a motor vehicle which is to be permanently removed from service under the carrier's authority**.** *[, the division director]* **The commission** may waive the license fee for a replacement sticker, stamp or registration receipt where a refusal to do so would result in manifest injustice to the carrier. The motor carrier may use the form of *[verified statement set forth below.]* **Verified Statement for Free Replacement of Regulatory License Sticker or Stamp, published by the Missouri Department of Transportation, Motor Carrier Services Division, 1320 Creek Trail Drive, Jefferson City, MO 65109 (July, 2002), which is incorporated by reference in this rule. The referenced form does not include any later amendments or additions**. The *[division]* **commission** shall waive the fee for the replacement sticker if the carrier removed the original sticker because the vehicle was permanently removed from service, and the carrier has submitted along with the verified statement the remnants of the removed sticker, including that portion on which the serial number is imprinted. Registration receipts issued in compliance with section (2) of this rule shall not be replaced except as provided in the SSRS Procedures Manual;

(F) The *[division]* **commission** shall not pay any refunds of regulatory license fees for unused license stickers, stamps or registration receipts. Motor carriers should request only the regulatory licenses needed for their actual operations;

(G) All regulatory licenses issued by the *[division]* **commission**, including license stickers (decals), license stamps and registration receipts, shall be effective from January 1 through December 31 of the year for which they are issued, and shall expire at 12:01 A.M. on the first day of January in the next year succeeding the year for which they were issued.

(H) Registration receipts, license stickers, license stamps and cab cards accompanying any vehicle shall be exhibited by the driver, on demand, to any authorized *[division]* **commission** personnel, officers of the Missouri State Highway Patrol, or other law enforcement officers; and

(I) Payment of all required regulatory license fees shall be tendered to this *[division]* **commission** in the form of a certified check, money order or other guaranteed funds, payable to the Director of Revenue. However, in the discretion of the *[division director]* **commission**, a personal or company check, electronic funds transfer, or other negotiable instrument may be accepted by the *[division]* **commission** as payment of the regulatory license fees, and if accepted it shall be subject to the following conditions:

1. Every check, negotiable instrument or electronic funds transfer shall be made payable to the Director of Revenue;

2. By tendering payment in the form of a check or other negotiable instrument, the applicant or motor carrier gives its "Implied Consent" that the division may, at any time, request information from the financial institution on which the check or negotiable instrument was drawn (drawee), and the applicant/motor carrier "Further Consents" that the drawee institution may provide the *[division]* **commission** with additional information, including financial information concerning the applicant/motor carrier, or the financial institution, or both, sufficient to satisfy the *[division]* **commission** that the negotiable instrument will, in fact, be paid in due course by the drawee institution;

3. Receipt or deposit of any check or other negotiable instrument by the *[division]* **commission**, or by any other agency or official of the state of Missouri, shall not be deemed as payment of the instrument, but only payment in fact of the full face amount of the instrument by the drawee, in due course, shall constitute payment thereof; and

4. If actual payment of a check or other negotiable instrument received by the *[division]* **commission** from an applicant or motor carrier for any regulatory license fee is declined or refused by the drawee financial institution, then the *[division]* **commission** may immediately suspend every property carrier registration, certificate and permit issued to that applicant, in accordance with the *[division's]* **commission's** applicable procedures for suspension. Until the property carrier registration, certificate or permit is reinstated by order of the *[division]* **commission**, any further operation by the applicant or motor carrier of any motor vehicle bearing a regulatory license issued by this *[division]* **commission** upon the public highways in this state shall be an unlawful use of that regulatory license in violation of this rule. The *[division's general]* **commission's chief** counsel may prosecute a complaint or other action as provided by law, to recover the amount of the unpaid instrument, together with a civil penalty and interest thereon, or to obtain an injunction or mandamus to prohibit the unlawful use of the license or receipt, or both.

(2) Except as provided in **subsection (1)(C) or** section (7), motor carriers engaged in interstate transportation in Missouri under authority issued by the ICC or *[FHWA]* **FMCSA** shall pay the annual regulatory license fee for each vehicle operated within Missouri under that authority. The fees shall be paid to the registration state in which the carrier registers its ICC or *[FHWA]* **FMCSA** authority as required in the SSRS Procedures Manual before the vehicles begin operating within Missouri. The required regulatory license for these vehicles shall be a true copy of the registration receipt issued by the registration state, showing that the carrier has paid the required Missouri annual license fees, which shall be carried in each vehicle while operating under ICC or *[FHWA]* **FMCSA** authority in this state.

(3) *[Every]* **Except as provided in subsection (1)(C), every** motor carrier operating in intrastate commerce, or interstate commerce transporting property or passengers exempt from *[FHWA]* **FMCSA** economic jurisdiction, or both, under a property carrier registration, certificate or permit issued by this *[division]* **commission**, shall apply to the *[division]* **commission** for the issuance of regulatory licenses no earlier than the first day of August, for each motor vehicle which it intends to operate on the public highways in Missouri during the ensuing year. Applications for these annual licenses shall be in writing and shall contain the following information:

(C) The property carrier registration, certificate or permit number issued to applicant by this *[division]* **commission**; and

(4) *[Motor]* **Except as provided in subsection (1)(C), motor** carriers shall display on each motor vehicle operated in intrastate commerce *[only, or both intrastate commerce and interstate commerce transporting property or passengers under ICC or FHWA authority,]* an annual license in the form of a license sticker (decal) issued by this *[division]* **commission**.

(B) The sticker shall be securely fastened to a permanent part of the vehicle. Any sticker which is affixed to any removable device upon the vehicle, or which has been altered or reinforced with tape, paper or cardboard or any other substances, shall be deemed void and any vehicle bearing a sticker in this condition will not be considered licensed, except that this shall not prohibit the application of a clear shellac or similar substance to the sticker after it has been securely affixed to the vehicle. A returned license sticker shall not be replaced by the *[division]* **commission** if it appears that it was attached with any removable device, or has been altered or reinforced other than as allowed in this subsection.

(C) After a motor carrier has paid the required regulatory license fee and has attached a valid license sticker to a particular vehicle as provided in this rule, if that vehicle is to be sold, assigned or otherwise transferred to another owner, then the transferor may leave the license sticker affixed to the vehicle when it is sold, assigned or transferred, and while the sticker remains affixed to that vehicle no motor carrier shall be required to pay another regulatory license fee for the use of that vehicle for that license year. In the alternative, the transferor may elect to remove the sticker from the vehicle to be transferred, taking care to preserve that portion of the sticker on which the serial number was imprinted. The transferor may then return the removed sticker to the *[division]* **commission**, along with an affidavit explaining the facts and circumstances in conformity with the provisions of subsection (E) of section (1) of this rule, and the *[division]* **commission** shall waive the license fee and issue a replacement license sticker to the carrier.

(5) *[Motor]* **Except as provided in subsection (1)(C), motor** carriers shall *[display]* **carry** on each motor vehicle operated in Missouri interstate commerce transporting property or passengers exempt from *[FHWA]* **FMCSA** economic jurisdiction an annual license in the form of a license stamp issued by this *[division]* **commission**. These stamps shall be issued and displayed as follows:

(A) Upon the filing of the required application, and payment by a qualified applicant of the required annual license fee in conformity with the payment requirements of subsection (1)(I) of this rule, the *[division]* **commission** shall issue a license stamp which shall be permanently attached to a Form D-1-Uniform Cab Card which shall *[accompany]* **be carried in** the licensed vehicle. *[If the regulatory license fee for the particular vehicle to operate in Missouri has already been paid to the registration state in compliance with the SSRS Procedures Manual, the division shall issue to the motor carrier an annual license sticker for that vehicle without payment of any additional fee;]* **The Form D-1 Uniform Identification Cab Card for Vehicle or Driveaway Operation Exempt from ICC Regulation, published by the National Association of Regulatory Utility Commissioners, 1101 Vermont Avenue, N.W., Washington, DC 20005 (May 1968), which is incorporated by reference in this rule. The referenced form does not include any later amendments or additions;**

(B) Each motor carrier shall apply to the National Association of Regulatory Utility Commissioners*[, P.O. Box 684, Washington, D.C. 20044]* for the issuance of a sufficient supply of Form D-1—Uniform Cab Cards for use with the vehicles which it intends to license and operate, or driveaway operations which it intends to conduct, within Missouri during the ensuing year;

(E) A typewriter or indelible ink shall be used in entering information in the blank spaces on a cab card. Any erasure or improper alteration of a cab card shall render it void. If a cab card is lost or destroyed, the motor carrier shall apply for a new license stamp and shall pay with the application the same fee prescribed for the original issuance of the cab card. If a new license stamp is issued by the *[division]* **commission**, the carrier shall prepare a new cab card and shall attach the new stamp to it as provided in this section; and

(6) A seventy-two (72)-hour license will be issued by the *[division]* **commission** or at any state weigh station to a motor carrier authorized to operate in intrastate commerce, or in interstate commerce transporting property or passengers which are exempt from the economic jurisdiction of the *[FHWA]* **FMCSA**, upon request, for use in case of emergency, temporary, unusual or peak demand for transportation. Applications for seventy-two (72)-hour licenses shall show the correct name, address and the certificate or permit number of the applicant. The application shall state the number of the licenses desired and shall be accompanied by payment of the required regulatory license fee in conformity with the payment requirements of subsection (1)(I) of this rule.

(B) Upon compliance with this section by the motor carrier, and at the carrier's request and expense, the *[division]* **commission** will transmit seventy-two (72)-hour licenses by telephone facsimile transmission.

(7) Any motor vehicle, trailer or semi-trailer operated by a nonresident motor carrier under proper interstate permits issued by this *[division]* **commission**, or under ICC or *[FHWA]* **FMCSA** interstate authority which has been registered in the carrier's registration state as required by the SSRS Procedures Manual, may traverse the highways of this state in interstate commerce without being accompanied by a license issued by this *[division]* **commission**, if the vehicle is fully licensed and the motor carrier has paid full regulatory fees applicable to the vehicle in the state of residence of the motor carrier and the state of residence has entered into a contract with this state by which like reciprocal privileges are extended by that state to resident motor carriers of this state. Any vehicle operated on Missouri highways in interstate commerce by a nonresident carrier pursuant to a reciprocal agreement with its state of residence shall be accompanied by evidence of qualification as required by its state of residence.

(A) Motor carriers shall follow the procedures provided in the SSRS Procedures Manual on reciprocal exemptions from regulatory license fees relating to vehicles used in interstate commerce as authorized by the ICC or *[FHWA]* **FMCSA**.

(B) In lieu of issuing the license stamp for vehicles used in interstate commerce which is exempt from the economic jurisdiction of *[FHWA]* **FMCSA**, if the motor carrier meets all qualifications required by its state of residence, the motor vehicle operator shall show the number of the permit issued to it by this *[division]* **commission** in the square bearing the name of this state on the back of the Uniform Cab Card, and the Uniform Cab Card shall be carried on the vehicle as the regulatory license.

*AUTHORITY: sections 622.027, [RSMo Supp. 1997] **390.041(1) and 390.138, RSMo 2000, and 226.008 and 390.136, RSMo Supp. 2004.** This rule was previously filed as 4 CSR 265-10.020. Emergency rule filed June 14, 1985, effective July 1, 1985, expired Oct. 28, 1985. Original rule filed Aug. 1, 1985, effective Oct. 29, 1985. For intervening history, please consult the **Code of State Regulations**. Moved to 7 CSR 265-10.020, effective July 11, 2002. Emergency amendment filed Aug. 15, 2005, effective Aug. 26, 2005, expires Feb. 23, 2006. Amended: Filed Aug. 15, 2005.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate. By eliminating the requirement that MoDOT must issue an additional form of regulatory license to properly registered interstate motor carriers, for motor vehicles they operate in Missouri intrastate commerce, MoDOT estimates that this amendment will reduce public entity costs by approximately four thousand five hundred twenty-seven dollars ($4,527) annually. These are the estimated annual costs that MoDOT currently pays for the production of thirty-five thousand six hundred seventy (35,670) intrastate license decals, and for the envelopes and postage needed to send those decals, to two thousand one hundred seventy-one (2,171) interstate motor carriers who obtained dual credentials under the present rule. The amendment will also allow MoDOT to reassign its employees' labor (worth an estimated thirty-one thousand four hundred thirty-four dollars ($31,434) annually) to perform other departmental functions, instead of issuing dual forms of regulatory licenses to motor carriers, for vehicles on which they have already paid Missouri's annual license fees.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate. By eliminating the requirement that properly registered interstate motor carriers must obtain and display an additional form of regulatory license upon motor vehicles they also operate in Missouri intrastate commerce, MoDOT estimates that this amendment will reduce private entity costs by approximately two hundred twenty-seven thousand ten dollars ($227,010) annually. These are estimated annual costs of compliance with this dual licensing requirement, which are incurred by two thousand one hundred seventy-one (2,171) motor carriers, whose employees obtain, handle, and display intrastate license decals upon thirty-five thousand six hundred seventy (35,670) motor vehicles, for which these carriers have also obtained interstate credentials.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Highways and Transportation Commission, Attn: Mari Ann Winters, Commission Secretary, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 80—Teacher Quality and Urban Education
Chapter 860—Scholarships and Financial Aid

PROPOSED AMENDMENT

5 CSR 80-860.010 Robert C. Byrd Honors Scholarship Program. The State Board of Education is amending the Purpose adding a new section (1) and renumbering and amending the original section (1).

PURPOSE: This proposed amendment will enable the department to more equally compare student transcripts in the case of a tie.

*PURPOSE: The Department of Elementary and Secondary Education has the authority to receive and expend federal funds for educational programs and to establish regulations for the administration of the programs in accordance with controlling federal statutes and regulations. This rule sets forth the general administrative procedures for the department's implementation of the **federally funded** Robert C. Byrd Honors Scholarship Program[, which is a federally funded program authorized under Title IV, Part A, Subpart 6 of the Higher Education Act of 1965].*

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The provisions of 34 CFR part 654, the Robert C. Byrd Honors Scholarship Program, promulgated (59 FR 32657) June

24, 1994, are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

[(1)] **(2)** The following procedures will be used in the administration of the program:

(A) *[January—]* **September:** Applications mailed to all high school (public and private) principals and counselors;

(B) January through March*[—]*: Applications *[blanks]* received and student data entered into computer by congressional district;

(C) April*[—]*:

1. Winners are selected on the basis of American College Test *[test]* **(ACT) or Scholastic Aptitude Test (SAT)** scores. **In the event of a tie, the applicant's unweighted cumulative grade point average (GPA) will be used. A transcript evaluation will be conducted for further ties.** In instances when the number of scholarships is not evenly divisible by nine (9), an equal number will be awarded in each congressional district. The remaining scholarships will be declared at large scholarships. These will be used to provide awards to both students in the event of a tie in scores*[, grade point average and class rank. In the event of a tie involving a general educational development student, both students would receive scholarships]*. Any remaining scholarships will be awarded to the next highest scoring students statewide;

2. Winners are sent an award letter, status verification form and statement of registration status; **and**

3. Nonwinners are sent a letter of notification; *[and]*

[4. A meeting is held for an advisory committee of counselors, principals and financial aid officers to get input on administrative procedures and selection criteria;]

(D) *[May through September—]* Status verification forms are received **throughout the year**; and

(E) *[September through February—]* Scholarship checks are mailed directly to the students **upon receipt of status verification forms**.

*AUTHORITY: sections **161.092, RSMo Supp. 2004 and** 178.430, RSMo [1986] **2000**. Original rule filed Oct. 15, 1990, effective March 14, 1991. Amended: Filed Aug. 15, 2005.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Elementary and Secondary Education, Attention: Dr. Charles Brown, Assistant Commissioner, Division of Teacher Quality and Urban Education, PO Box 480, Jefferson City, MO 65102-0480. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.010 Definitions

PURPOSE: This rule provides definitions used throughout this chapter.

(1) Unless otherwise specified, in addition to the definitions provided for in this rule, the definitions in 23 U.S.C. 101(a) are applicable to this chapter whether or not specifically restated, or revised herein, and in their unrevised form to the extent not in conflict with this chapter.

(2) Adjusted low bid means a form of best value selection in which qualitative aspects are scored on a numerical scale expressed as a decimal; price is then divided by qualitative score to yield an "adjusted bid" or "price per quality point." Award is made to proposer with the lowest adjusted bid.

(3) Alternate technical concept (ATC) means alternative concepts to the technical design requirements in the Request for Proposal (RFP) that are equal or better in quality or effect as determined by the contracting agency in its sole discretion and which have successfully been used elsewhere under comparable circumstances. A concept is not an ATC if it merely seeks to reduce quantities, performance, or reliability, or seeks a relaxation of the contract requirements.

(4) Best value selection means any selection process in which proposals contain both price and qualitative components and award is based upon a combination of price and qualitative considerations.

(5) Clarifications means a written or oral exchange of information that takes place after the receipt of proposals when award without discussions is contemplated. The purpose of clarifications is to address minor or clerical revisions in a proposal.

(6) Commission means the Missouri Highways and Transportation Commission.

(7) Communications are exchanges, between the contracting agency and proposers, after receipt of proposals, which lead to the establishment of the competitive range.

(8) Competitive acquisition means an acquisition process that is designed to foster an impartial and comprehensive evaluation of proposers' proposals, leading to the selection of the proposal representing the best value to the contracting agency.

(9) Competitive range means a list of the most highly rated proposals based on the initial proposal rankings. It is based on the rating of each proposal against all evaluation criteria.

(10) Construction means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway, including bond costs and other costs relating to the issuance of bonds whether in accordance with 23 U.S.C. section 122 or other debt financing instruments and costs incurred by the state in performing project related audits that directly benefit the state highway program. Such term includes:

(A) Locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration of the Department of Commerce);

(B) Resurfacing, restoration, and rehabilitation;

(C) Acquisition of rights-of-way;

(D) Relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(E) Elimination of hazards of railway grade crossings;

(F) Elimination of roadside obstacles;

(G) Improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(H) Capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

(11) Contracting agency means the public agency awarding and administering a design-build contract. The contracting agency may be the commission, MoDOT or another state or local public agency.

(12) Deficiency means a material failure of a proposal to meet a contracting agency requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

(13) Design-build contract means an agreement that provides for design and construction of improvements by a contractor or private developer.

(14) Design-builder means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership or other entity making a proposal to be contractually responsible to perform, or which is performing, the project design and construction under a design-build contract.

(15) Disadvantaged business enterprise (DBE) means a for-profit small business concern—

(A) That is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation or other business entity, in which fifty-one percent (51%) of the stock or shares are owned by one or more socially and economically disadvantaged individuals; and

(B) Whose management and daily business operations are controlled by one or more of those socially and economically disadvantaged individuals who own the disadvantaged business enterprise.

(16) Discussions mean written or oral exchanges that take place after the establishment of the competitive range with the intent of allowing the proposers to revise their proposals.

(17) Division administrator means the division administrator, Missouri Division of the Federal Highway Administration, United States Department of Transportation (FHWA).

(18) Fixed price/best design means a form of best value selection in which contract price is established by the contracting agency and stated in the Request for Proposals document. Design solutions and other qualitative factors are evaluated and rated, with award going to the firm offering the best qualitative proposal for the established price.

(19) Highway includes:

(A) A road, street, and parkway;

(B) A right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and

(C) A portion of any interstate bridge or tunnel and the approaches thereto, the cost of which is assumed by the commission.

(20) Intelligent Transportation System (ITS) services means services which provide for the acquisition of technologies or systems of technologies (e.g., computer hardware or software, traffic control devices, communications link, fare payment system, automatic vehicle location system, etc.) that provide or contribute to the provision of one or more ITS user services as defined in the National ITS Architecture.

(21) Interstate system means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in 23 U.S.C. section 103(c).

(22) Modified design-build means a variation of design-build in which the contracting agency furnishes offerors with partially complete plans. The design-builders role is generally limited to the completion of the design and construction of the project.

(23) National Highway System (NHS) means the federal-aid highway system described in 23 U.S.C. section 103(b).

(24) Non-qualified project means a design-build project that does not meet the definition of a qualified project in 23 U.S.C. 112(b)(3)(C).

(25) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the contracting agency, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(26) Prequalification means the contracting agency's process for determining whether a firm is fundamentally qualified to compete for a certain project or class of projects. The prequalification process may be based on financial, management and other types of qualitative data. Prequalification should be distinguished from short listing.

(27) Price proposal means the price submitted by the offeror to provide the required design and construction services.

(28) Project manager means the person designated by the contracting agency whose specific authority will be set forth in the contract documents.

(29) Proposal modification means a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

(30) Proposal revision means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting agency, as the result of negotiations.

(31) Public-Private agreement means the formal instrument to be executed by the commission and the secretary as required by 23 U.S.C. section 106.

(32) Qualified project means any design-build project with a total estimated cost greater than fifty (50) million dollars or an intelligent transportation system project greater than five (5) million dollars as described in 23 U.S.C. 112(b)(3)(C).

(33) Request for Proposal (RFP) means a document that describes the procurement process, forms the basis for the final proposals and may potentially become an element in the contract. In any design-build contract, whether involving state or federal funds, the contracting agency shall require that each entity submitting a request for qualifications provide a detailed DBE participation plan. The plan shall provide information describing the experience of the entity in meeting DBE participation goals, how the entity will meet the DBE goal design-build project and such other qualifications that the commission considers to be in the best interest of the state.

(34) Request for Qualification (RFQ) means a document issued by the contracting agency describing the project in enough detail to let potential proposers determine if they wish to compete and forms the

basis for requesting qualifications submissions from which the most highly qualified proposers can be identified.

(35) Secretary means the Secretary of Transportation of the United States Department of Transportation.

(36) Short listing means the narrowing of the field of offerors through the selection of the most qualified proposers who have responded to an RFQ.

(37) Solicitation means a public notification of a contracting agency's need for information, qualifications, or proposals related to identified services.

(38) Standard design-build means a procurement process in which the first phase consists of short listing (based on qualifications submitted in response to an RFQ) and the second phase consists of the submission of price and technical proposals in response to an RFP.

(39) State means the state of Missouri, MoDOT or commission.

(40) State funds means funds raised under the authority of the state or any political or other subdivision thereof, and made available for expenditure under direct control of the commission or MoDOT.

(41) Stipend means a monetary amount paid to unsuccessful proposers.

(42) Technical *proposal* means that portion of a design-build proposal that contains design solutions and other qualitative factors that are provided in response to the RFP document.

(43) Tradeoff means an analysis technique involving a comparison of price and non-price factors to determine the best value when considering the selection of other than the lowest priced proposal.

(44) Transportation corporation means any transportation corporation organized under sections 238.300 to 238.367, RSMo.

(45) Transportation development district means a transportation development district organized under sections 238.200 to 238.275, RSMo.

(46) Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

(47) Weighted criteria process means a form of best value selection in which maximum point values are pre-established for qualitative and price components, and award is based upon high total points earned by the proposers.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.020 General

PURPOSE: This rule sets forth the scope of the chapter.

(1) This chapter describes the commission's policies and procedures for approving design-build projects financed under Title 23, *United States Code* (U.S.C.) by use of state funds, by use of funds of local public agencies or counties, or any combination of fund sources. This chapter satisfies the requirement of 227.107, RSMo Supp. 2004. The contracting procedures of this chapter apply to all design-build projects undertaken by the commission.

(2) The provisions of this chapter apply to all design-build projects within the state highway system, interstate or National Highway System (NHS) highway or linked to a federal-aid highway project (i.e., the project would not exist without another federal-aid highway project).

(3) The commission is neither requiring nor promoting the use of the design-build contracting method. The design-build contracting technique is optional and its use limited by law.

(4) Relations of the National Environmental Protection Act (NEPA) review process to the design-build procurement process.

(A) A commission Request for Qualification (RFQ) solicitation may be released prior to the conclusion of the NEPA review process as long as the RFQ solicitation informs proposers of the general status of the NEPA process.

(B) A commission Request for Proposal (RFP) will not be released prior to the conclusion of the NEPA process. The NEPA review process is concluded with either a Categorical Exclusion (CE) classification, an approved Finding of No Significant Impact (FONSI), or an approved Record of Decision (ROD) as defined in 23 CFR 771.113(a).

(C) A commission RFP must address how environmental commitments and mitigation measures identified during the NEPA process will be implemented.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp.2004. Original rule filed Aug. 15 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.030 Procedures for Solicitations and Receipt of Proposals

PURPOSE: This rule lists procedures appropriate for solicitation and receipt of proposals, provides for oral presentations during the procurement process and restricts team changes.

(1) The commission will give public notice of a Request for Qualifications in at least two (2) public newspapers that are distributed wholly or in part in this state and at least one (1) construction industry trade publication that is distributed nationally. In addition, the commission may use additional procedures deemed appropriate for the solicitation and receipt of proposals and information including the following:

(A) Exchanges with industry before receipt of proposals;

(B) Request for Qualification (RFQ), Request for Proposal (RFP) and contract format;

(C) Solicitation schedules;

(D) Lists of forms, documents, exhibits, and other attachments;

(E) Representations and instructions;

(F) Handling proposals and information; and

(G) Submission, modification, revisions and withdrawal of proposals.

(2) All responses to the Request for Qualifications will be evaluated by the pre-qualification review/short listing team. This team will be comprised of the following Missouri Department of Transportation (MoDOT) staff or their designated representative: chief engineer, chief financial and administrative officer, controller, director of program delivery, one (1) or more district engineer(s), project manager for the given project, state construction and materials engineer, state bridge engineer and the state design engineer. An external partner(s) may be asked to act as an observer to the pre-qualification/short listing process.

(3) Use of Oral Presentations During the Procurement Process.

(A) Oral presentations as a substitute for portions of a written proposal may be used in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, however, the commission must comply with any appropriate federal and state procurement integrity standards.

(B) Oral presentations may augment written information. The commission or MoDOT will maintain a record of oral presentations to document what information was relied upon in making the source selection decision. The commission will decide the appropriate method and level of detail for the record (e.g., videotaping, audio tape recording, written record, contracting agency notes, copies of proposer briefing slides or presentation notes). A copy of the record will be placed in the contract file and may be provided to proposers upon request.

(4) Restrictions on team changes after response to an RFQ where the proposer's qualifications are a major factor in the selection of the successful design-builder, team member switching (adding or switching team members) is discouraged after submission of response to an RFQ. However, the commission may use its discretion in reviewing team changes or team enhancement requests on a case-by-case basis. Any specific project rules related to changes in team members or changes in personnel within teams will be explicitly stated in a project solicitation.

AUTHORITY: sections 226.020 RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.040 Applicability to Public-Private Agreements

PURPOSE: This rule describes how design-build applies to a project developed under a public-private partnership.

(1) In order for a project being developed under a public-private agreement to be eligible for federal-aid funding (including traditional federal-aid funds, direct loans, loan guarantees, lines of credit, or some other form of credit assistance), the commission must have awarded the contract to the public-private entity through a competitive process that complies with federal requirements causing the project to be federal-aid eligible, and applicable state and local laws.

(2) If the commission or the public-private entity wishes to utilize traditional federal-aid funds in a project under a public-private agreement, the applicability of federal-aid procurement procedures will depend on the nature of the public-private agreement.

(A) If the public-private agreement establishes price and an assignment of risk, then all subsequent contracts executed by the public-private entity are considered to be subcontracts and are not subject to federal-aid procurement requirements.

(B) If the public-private agreement does not establish price and an assignment of risk, the project's developer is considered to be an agent of the commission, and the public-private entity and each of them is responsible to and must follow the appropriate federal-aid procurement requirements (23 CFR part 172 for engineering service contracts, 23 CFR part 635 for construction contracts and the requirements of 23 CFR part 636 for design-build contracts) for all prime contracts (not subcontracts) from initiation of the project and throughout the development of the project at each stage.

(3) The commission will ensure such public-private projects comply with all nonprocurement requirements of Title 23 *United States Code*, regardless of the form of the Federal Highway Administration (FHWA) funding (traditional federal-aid funding or credit assistance). This includes compliance with all FHWA policies such as environmental and right-of-way requirements and compliance with such construction contracting requirements as Buy America, Davis-Bacon minimum wage rate requirements, for federally funded construction or design-build contracts under the public-private agreement.

(4) The parties to the public-private entity agreement are in turn responsible to learn of and have affirmative responsibility to comply with all applicable procurement and nonprocurement requirements of Title 23 *United States Code*, 23 CFR, other applicable federal and state laws and regulations. The parties to the public-private entity agreement may be required by the commission to provide written assurances, opinions of counsel and certifications of compliance with those laws from time-to-time. It will not be the responsibility of the commission to structure a public-private agreement to comply with or to engage in efforts to detect noncompliance by the public-private agreement parties with applicable laws and regulations.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.050 Types of Projects in Which Design-Build Contracting May Be Used

PURPOSE: This rule provides for the design-build method used in determining a project "qualified" and how it applies to Intelligent Transportation System (ITS) projects.

(1) Subject to the provisions of 227.107, RSMo Supp. 2004, the design-build contracting technique may be used for any qualified or nonqualified project which the commission deems to be appropriate on the basis of project delivery time, cost, construction schedule and/or quality.

(2) The use of the term "qualified project" does not limit the use of design-build contracting by the commission. It merely determines the Federal Highway Administration's (FHWA's) procedures for approval. The division administrator may approve the design-build method for a "qualified project" which meets the requirements of this chapter.

(3) The FHWA division administrator may also approve other design-build projects (which do not meet the "qualified projects" definition) by using Special Experimental Projects No. 14 (SEP-14), "Innovative Contracting Practices," provided the project meets the requirements of this chapter. Projects that do not meet the requirements of this chapter, (either "qualified or nonqualified" projects) must be submitted to the FHWA for conceptual approval.

(4) As a consequence of these differences in FHWA procedures, Missouri Department of Transportation (MoDOT) procedures will vary to comply with FHWA procedures.

(5) For the purpose of this chapter, a federal-aid ITS design-build project meets the criteria of a "qualified project" if:

(A) A majority of the scope of services provides ITS services (at least fifty percent (50%) of the scope of work is related to ITS services); and

(B) The estimated contract value exceeds five (5) million dollars.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
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PROPOSED RULE

7 CSR 10-24.060 Stipends

PURPOSE: This rule provides for the payment of stipends, if elected by the commission, and the criteria used in determining the amount of stipend.

(1) The commission will pay a reasonable stipend to unsuccessful proposers who have submitted responsive proposals.

(2) On federal-aid projects stipends are eligible for federal-aid participation. Proposers will cooperate in providing such records and complying with such process as required for the commission to obtain federal participation.

(3) Stipend amount determination may consider:

(A) Project scope;

(B) Substantial opportunity for innovation;

(C) The cost of submitting a proposal;

(D) Encouragement of competition;

(E) Compensate unsuccessful proposers for a portion of their costs (usually one-third to one-half (1/3 to 1/2) of the estimated proposal development cost); and

(F) Ensure that smaller companies are not put at a competitive disadvantage.

(4) The commission will retain the right to use ideas from both successful and unsuccessful proposers, if the stipend is accepted. The Request for Proposal (RFP) will describe the process for distributing the stipend to qualifying proposers and transfer of ownership of ideas in intellectual property of both the successful and qualifying unsuccessful proposers.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule might cost state agencies or political subdivisions nine (9) million dollars to twelve (12) million dollars in the aggregate from FY 2005 to FY 2012. These costs will already be included in the amounts originally programmed for these projects and do not represent additional expenditures by the department.

PRIVATE COST: This proposed rule might cost private entities thirteen and one-half (13.5) million dollars to eighteen (18) million dollars in the aggregate from FY 2005 to FY 2012. These costs will already be included in the amounts originally programmed for these projects and do not represent additional expenditures by the private entities.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER 7 CSR 10-24

Title: 7 - Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 24 - Design Build Project Contracts

Rule Number and Name:	7 CSR 10-24.060 Stipends
Type of Rulemaking	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost in the Aggregate.
Missouri Department of Transportation	**Costs for FY 2005 to FY 2012** $9,000,000.00 to $12,000,000.00

III. WORKSHEET

IV. ASSUMPTIONS

1. Section 227.107 RSMo Supp. 2002 requires a stipend to be paid by the Department to unsuccessful offerors. The Missouri Department of Transportation and the Missouri Highway and Transportation Commission assume there may be a cost greater than $500 annually in the aggregate to the Department if Design Build Contracts are awarded and stipends are required to be paid to the unsuccessful offeror.
2. The Missouri Department of Transportation assumes there will be at most 3 unsuccessful offerors for each project offered under this rule.
3. Section 227.107 RSMo Supp. 2002 allows the Missouri Department of Transportation to award up to three (3) projects prior to the end of FY 2012. The Missouri Department of Transportation assumes that if three (3) projects are awarded, and stipends are required to be paid for each of the three (3) projects, the cost to the Department could total $9,000,000.00 to $12,000,000.00 for all projects
4. The Missouri Department of Transportation assumes these costs entail Request for Qualification (RFQ), Request for Proposal (RFP) and stipends.
5. These costs will already be included in the amounts originally programmed for these projects and do not represent additional expenditures by the Department.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER 7 CSR 10-24

Title: 7 - Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 24 - Design Build Project Contracts

Rule Number and Name:	7 CSR 10-24.060 Stipends
Type of Rulemaking	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Affected Private Entities by Class	Estimated Cost in the Aggregate.
Unsuccessful Responsive Offerors	**Costs for FY 2005 to FY 2012** $13,500,000.00 to $18,000,000.00

III. WORKSHEET

IV. ASSUMPTIONS

1. Section 227.107 RSMo Supp. 2002 requires a stipend to be paid by the Department to unsuccessful offerors. The Missouri Department of Transportation and the Missouri Highway and Transportation Commission assume there may be a cost greater than $500 annually in the aggregate to the Department if Design Build Contracts are awarded and stipends are required to be paid to the unsuccessful offeror.
2. The costs to Private Entities are being reimbursed at no more than half the estimated proposal development cost and are not intended to fully reimburse the Private Entities. The Missouri Department of Transportation assumes this will induce Private Entities to keep down costs of responding to the Request for Proposal.
3. The Missouri Department of Transportation assumes there will be at most 3 unsuccessful offerors for each project offered under this rule.
4. Section 227.107 RSMo Supp. 2002 allows the Missouri Department of Transportation to award up to three (3) projects prior to the end of FY 2012. The Missouri Department of Transportation assumes that if three (3) projects are awarded, and stipends are required to be paid for each of the three (3) projects, the cost to the Department could total $13,500,000.00 to $18,000,000.00 for all projects
5. The Missouri Department of Transportation assumes these costs entail Request for Qualification (RFQ), Request for Proposal (RFP) and stipends.
6. These costs will already be included in the amounts originally programmed for these projects and do not represent additional expenditures by the private entities.

Title 7—DEPARTMENT OF TRANSPORTATION
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Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.070 Risk Allocation

PURPOSE: This rule provides for factors to be considered in risk allocation.

(1) The commission will consider, identify, and allocate the risks in the Request for Proposal (RFP) document and define these risks in the contract. Risk will be allocated with consideration given to the party who is in the best position to manage and control a given risk or the impact of a given risk.

(2) Risk allocation will vary according to the type of project and location, however, the following factors should be considered and will be used to the extent the commission considers them appropriate:

(A). Governmental risks, including the potential for delays, modifications, withdrawal, scope changes, or additions that result from multi-level federal, state, and local participation and sponsorship;

(B) Regulatory compliance risks, including environmental and third-party issues, such as permitting, railroad, and utility company risks;

(C) Construction phase risks, including differing site conditions, traffic control, interim drainage, public access, weather issues, and schedule which good engineering and contracting practice would take into account in determining site investigation plan and design, which reflect sub-surface or latent physical conditions which are known, discoverable or which a reasonable person would be on notice to investigate or expect or which are inherent in the type of work and geographic location of the work;

(D) Post-construction risks, including public liability and meeting stipulated performance standards; and

(E) Right-of-way risks including acquisition costs, appraisals, relocation delays, condemnation proceedings, including court costs and others.

(3) Information exchange with industry at an early project stage will occur if it will facilitate understanding of the capabilities of potential proposers. However, any exchange of information must be consistent with state procurement integrity requirements. Information exchanges may take place with potential proposers, end users, acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(4) The purpose of exchanging information is to improve the understanding of the commission requirements and industry capabilities, thereby allowing potential proposers to judge whether or how they can satisfy those requirements, and enhancing commission's ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(5) An early exchange of information may identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules. This also includes the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions. Some techniques that may be used to promote early exchanges of information are:

(A) Industry or small business conferences;

(B) Public hearings;

(C) Market research;

(D) One-on-one meetings with potential proposers (except that any meetings that are substantially involved with potential contract terms and conditions will include the Missouri Department of Transportation (MoDOT) project manager designated for the project and are subject to the restrictions on disclosure of information set out in section (5) of this rule);

(E) Pre-solicitation notices;

(F) Draft RFPs;

(G) Request for Information (RFI) ;

(H) Pre-solicitation or pre-proposal conferences; and

(I) Site visits.

(6) RFIs may be used when the commission does not intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted to form a binding contract. There is no required format for an RFI.

(7) When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential proposers, that information shall be made available to all potential proposers as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a particular proposer in response to that proposer's request must not be disclosed if doing so would reveal the potential proposer's confidential business strategy. When a pre-solicitation or pre-proposal conference is conducted, materials distributed at the conference will be made available to all potential proposers, upon request.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
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PROPOSED RULE

7 CSR 10-24.080 Organizational Conflicts of Interest

PURPOSE: This rule describes the conflict of interest policy applicable to design-build projects.

(1) State statutes, regulations or policies concerning organizational conflict of interest will be specified or referenced in the design-build Request for Qualification (RFQ) or Request for Proposal (RFP) document as well as any contract for engineering services, inspection or

technical support in the administration of the design-build contract. All design-build solicitations will address the following situations as appropriate:

(A) Consultants and sub-consultants who assist the commission in the preparation of a RFP document will not be allowed to participate as an proposer or join a team submitting a proposal in response to the RFP. However, the commission may determine there is not an organizational conflict of interest for a consultant or sub-consultant where:

1. The role of the consultant or sub-consultant was limited to provision of preliminary design, reports, or similar "low-level" documents that will be incorporated into the RFP, and did not include assistance in development of instructions to proposers or evaluation criteria; or

2. Where all documents and reports delivered to the commission by the consultant or sub-consultant are made available to all offerors.

(B) All solicitations for design-build contracts, including related contracts for inspection, administration or auditing services, must include a provision which:

1. Directs proposers attention to this section;

2. States the nature of the potential conflict as seen by the commission;

3. States the nature of the proposed restraint or restrictions, and duration, upon future contracting activities, if appropriate;

4. Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this section to the contract are subject to negotiation; and

5. Requires proposers to provide information concerning potential organizational conflicts of interest in their proposals. The apparent successful proposers must disclose all relevant facts concerning any past, present or currently planned interests that may present an organizational conflict of interest. Such firms must state how their interests, or those of their chief executives, directors, key project personnel, or any proposed consultant, contractor or subcontractor may result, or could be viewed as, an organizational conflict of interest. The information may be in the form of a disclosure statement or a certification.

(C) Based upon a review of the information submitted, the commission will make a written determination of whether the proposer's interests create an actual or potential organizational conflict of interest and identify any actions that must be taken to avoid, neutralize, or mitigate such conflict. There should be an award of the contract to the apparent successful proposer unless an organizational conflict of interest is determined to exist that cannot be avoided, neutralized, or mitigated, in the judgment of the commission.

(2) The organizational conflict of interest provisions in this section provide minimum standards for the commission to identify, mitigate or eliminate apparent or actual organizational conflicts of interest. To the extent that state developed organizational conflict of interest standards are less stringent than those contained in any applicable federal statute, regulation or policy, the latter standards prevail.

(3) State laws and procedures governing improper business practices and personal conflicts of interest will apply to the commission selection team members. In the absence of such state provisions, the requirements of 48 CFR Part 3, Improper Business Practices and Personal Conflicts of Interest, will apply to selection team members.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Title 7—DEPARTMENT OF TRANSPORTATION
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PROPOSED RULE

7 CSR 10-24.100 Selection Procedures and Award Criteria

PURPOSE: This rule provides the criteria used to determine whether standard design-build or modified design-build procedures will be used.

(1) The commission will use a two (2)-phase selection procedure for all design-build projects. If it is determined by the commission that the design build procedure is not appropriate for a given project, based on the criteria in 7 CSR 10-24.130 the modified design-build contracting method may be utilized.

(2) The following criteria will be used to decide whether design-build or modified design-build selection procedures are appropriate:

(A) The number of offers anticipated;

(B) Proposers are expected to perform substantial design work before developing price proposals;

(C) Proposers will incur a substantial expense in preparing proposals; and

(D) Commission has sufficiently defined and analyzed other contributing factors, including:

1. The requirements of the project;
2. The time constraints for delivery of the project;
3. The capability and experience of potential contractors;
4. Commission capabilities to manage the standard design-build selection process; and
5. Any other criteria that the commission may consider appropriate.

(3) The commission will identify the selection procedure and award criteria in the Request for Qualification (RFQ). The following will determine the type of selection procedure and award criteria used by the commission:

Selection procedure	Award criteria options
Standard Design-Build Selection Procedures	Lowest price, adjusted low bid (price per quality point), meets criteria/low bid, weighted criteria process, fixed price/best design, best value.
Modified Design-Build	Lowest price technically acceptable.

(4) Commission will base the source selection decision on a comparative assessment of proposals against all selection criteria in the solicitation. Commission may use reports and analyses prepared by

others, however, the source selection decision shall represent commission's independent judgment.

(5) The source selection decision will be documented, and the documentation will include the rationale for any business judgments and tradeoffs made or relied on, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

(6) A minimum of two (2) to a maximum of five (5) firms will be short-listed. If the commission fails to receive offers from at least two (2) responsive proposers, the offers will not be opened; and the commission may re-advertise the project.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

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PROPOSED RULE

7 CSR 10-24.110 Solicitation Procedures for Competitive Proposals

PURPOSE: This rule provides the elements included in phase one and phase two solicitation procedures.

(1) The first phase shall consist of a short listing based on a Request for Qualification (RFQ).

(2) The second phase shall consist of the receipt and evaluation of price and technical proposals in response to a Request for Proposal (RFP).

(3) The commission will include the following items in any phase one solicitation:

(A) The scope of the work;

(B) The cost estimate of the design-build project;

(C) The project completion date; and

(D) The requirement of a detailed disadvantaged business enterprise (DBE) participation plan including:

1. Information describing the experience of the proposer in meeting DBE participation goals;

2. How the proposer will meet the commission DBE participation goal; and

3. Such other qualifications that the commission considers to be in the best interest of the state as stated in the RFQ.

(E) The phase one evaluation factors and their relative weights, including:

1. Technical approach (but not detailed design or technical information);

2. Technical qualifications, such as:

A. Specialized experience and technical competence;

B. The capability of proposers to perform, including key personnel; and

C. Past performance of the members of the proposer's team, including the architect-engineer and construction members;

3. Other appropriate factors, excluding cost or price related factors which are not permitted in phase one; and

(F) Phase two evaluation factors; and

(G) A statement of the maximum number of proposers that will be short-listed to submit phase two proposals.

(4) The commission will include the requirements for separately submitted sealed technical proposals and price proposals in the phase two solicitation. All factors and significant subfactors that will affect contract award and their relative importance will be stated clearly in the solicitation. The commission will use its own procedures for the solicitation as long as it complies with the requirements of this section.

(5) The commission may allow proposers to submit alternate technical concepts in their proposals as long as these alternate concepts do not conflict with criteria agreed upon in the environmental decision making process. Alternate technical concept proposals may supplement, but not substitute for base proposals that respond to the RFP requirements.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
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PROPOSED RULE

7 CSR 10-24.120 Past Performance

PURPOSE: This rule provides for the use of past performance information in evaluating contractor during either phase one or phase two solicitations.

(1) If the commission elects to use past performance criteria as an indicator of an proposer's ability to perform the contract successfully, the information may be used as evaluation criteria in either phase one

or phase two solicitations. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance may be considered.

(2) For evaluating proposers with no relevant performance history, the commission will provide proposers an opportunity to identify past or current contracts, including federal, state, and local government and private, for efforts similar to the current solicitation.

(3) If the commission elects to request past performance information, the solicitation will also authorize proposers to provide information on problems encountered on the identified contracts and the proposer's corrective actions. The commission may consider this information, as well as information obtained from any other sources, when evaluating the proposer's past performance.

(4) The commission may, at its discretion, determine the relevance of similar past performance information.

(5) The evaluation will take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the current acquisition.

(6) In the case of an proposer without a record of relevant past performance or for whom information on past performance is not available, the proposer may not be evaluated favorably or unfavorably on past performance.

(7) The commission may use any existing prequalification procedures for either construction or engineering design firms as a supplement to the procedures in this section.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
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PROPOSED RULE

7 CSR 10-24.130 Modified Design-Build Procedures

PURPOSE: This rule describes the modified design-build selection procedures.

(1) Modified design-build selection procedures, the lowest price technically acceptable source selection process, may be used for any project.

(2) The Request for Proposal (RFP) will clearly state the following:

(A) The identification of evaluation factors and significant subfactors that establish the requirements of acceptability; and

(B) That award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for noncost factors.

(3) Tradeoffs will not be permitted, unless the tradeoff is in accordance with 7 CSR 10-24.110. However, the commission may incorporate cost-plus-time (A+B) bidding procedures, lane rental, or other cost-based provisions in such contracts.

(4) Proposals will be evaluated for acceptability but not ranked using the noncost/price factors.

(5) Exchanges may occur in accordance with 7 CSR 10-24.300 through 7 CSR 10-24.330.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

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PROPOSED RULE

7 CSR 10-24.140 Tradeoffs in Design-Build Contracting

PURPOSE: This rule describes when and how tradeoffs should be used in awarding a design-build contract and documentation of the tradeoff decisions.

(1) At its discretion, the commission may consider the tradeoff technique when it is desirable to award to other than the lowest priced proposer or other than the highest technically rated proposer.

(2) If the commission uses a tradeoff technique, the following will apply:

(A) All evaluation factors and significant subfactors that affect contract award and the factor's relative importance must be clearly stated in the solicitation; and

(B) The solicitation must also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are:

1. Significantly more important than cost or price; or
2. Approximately equal in importance to cost or price; or
3. Significantly less important than cost or price.

(3) When tradeoffs are performed, the source selection records must include the following:

(A) An assessment of each proposer's ability to accomplish the technical requirements; and

(B) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

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Title 7—DEPARTMENT OF TRANSPORTATION
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PROPOSED RULE

7 CSR 10-24.150 Use of a Competitive Range to Limit Competition

PURPOSE: This rule provides for establishing a competitive range to limit competition.

(1) The solicitation may notify proposers that a competitive range can be used for purposes of efficiency. The commission may limit the number of proposals to a number that will permit efficient competition. The commission will provide written notice of elimination to any proposer whose proposal is not within the competitive range. Proposers eliminated from the competitive range may request a debriefing according to procedure approved by the commission. The commission may provide for pre-award or post-award debriefings.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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PROPOSED RULE

7 CSR 10-24.200 Proposal Evaluation Factors

PURPOSE: This rule describes the selection of the proposal evaluation factors and the limitations on the selection and the possible inclusion of prequalification standards.

(1) The commission will select proposal evaluation factors for each design-build and modified design-build project.

(A) The proposal evaluation factors and significant subfactors will be tailored to the acquisition.

(B) Evaluation factors and significant subfactors will:

1. Represent the key areas of importance and emphasis to be considered in the source selection decision; and

2. Support meaningful comparison and discrimination between and among competing proposals.

(2) Limitations on the Selection and Use of Proposal Evaluation Factors Are as Follows:

(A) The selection of the evaluation factors, significant subfactors and their relative importance are within the commission's broad discretion subject to the following:

1. The commission will evaluate price in every source selection where construction is a significant component of the scope of work;

2. The commission will evaluate the quality of the product or service through consideration of one (1) or more nonprice evaluation factors. These factors may include (but are not limited to) such criteria as:

A. Compliance with solicitation requirements;

B. Completion schedule (contractual incentives and disincentives for early completion may be used where appropriate); or

C. Technical solutions;

3. The commission may evaluate past performance, technical experience and management experience;

4. The commission may include prequalification standards when the scope of the work involves very specialized technical expertise or specialized financial qualifications;

(B) All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the solicitation;

(C) Disadvantaged Business Enterprise (DBE) commitments exceeding the commission's stated goal will not be used as a proposal evaluation factor in determining the successful proposer.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.210 Process to Review, Rate and Score Proposals

PURPOSE: This rule describes the process used to rate and score proposals.

(1) Technical and price proposals will normally be reviewed independently by separate evaluation teams. However, there may be occasions where the same evaluators needed to review the technical proposals are also needed in the review of the price proposals. This may occur where a limited amount of technical expertise is available to review proposals. Price information may be provided to such evaluators in accordance with this chapter and the provisions of the Request for Proposal (RFP).

(2) Proposal evaluation is an assessment of the proposer's proposal and ability to perform the prospective contract successfully. The commission will evaluate proposals solely on the factors and subfactors specified in the solicitation.

(3) The commission may conduct evaluations using any rating method or combination of methods including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation must be documented in the contract file.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.300 Information Exchange, General

PURPOSE: This rule describes the types of information exchange that may take place either prior to or after the release of the Request for Proposal.

(1) Verbal or written information exchanges prior to the release of the Request for Proposal (RFP) document must be consistent with state and/or local procurement integrity requirements, as well as those provided in 23 CFR 636.115 and 7 CSR 10-24.070.

(2) Information exchange may be used at different points after the release of the RFP document. The following table summarizes the types of communications that will be discussed in 7 CSR 10-24.310 through 7 CSR 10-24.330. These communication methods are optional.

Type of Information Exchange	When	Purpose	Parties Involved
(1) Clarifications	After receipt of proposal	Used when award without discussions is contemplated. Used to clarify certain aspects of a proposal (resolve minor errors, obtain additional past performance information, etc.).	Any offeror whose proposal is not clear to the commission.
(2) Communications	After receipt of proposals, prior to the establishment of the competitive range	Used to address issues which might prevent a proposal from being placed in the competitive range.	Only those proposers whose exclusion from, or inclusion in, the competitive range is uncertain. All proposers whose past performance information is the determining factor preventing them from being placed in the competitive range.
(3) Discussions (see 7 CSR 10-24.400 through 24.413)	After receipt of proposals and after determination of the competitive range	Enhance commission understanding of proposals and proposers understanding of scope of work. Facilitate the evaluation process.	Must be held with all proposers in the competitive range.

(3) Commission will not engage in information exchanges that:

(A) Favor one proposer over another;

(B) Reveal an proposer's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an proposer's intellectual property to another proposer;

(C) Reveal an proposer's price without that proposer's permission;

(D) Reveal the names of individuals providing reference information about an proposer's past performance; or

(E) Knowingly furnish source selection information that could be in violation of Missouri procurement integrity standards applicable to the commission.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.310 Clarifications

PURPOSE: This rule describes the "clarification" type of information exchange.

(1) The commission may clarify any aspect of proposals that would enhance the commission's understanding of an proposer's proposal. Clarification exchanges are discretionary. They do not have to be held with any specific number of proposers and do not have to address specific issues.

(2) Clarification may include information such as an proposer's past performance to which the proposer has not previously had an opportunity to respond.

(3) The commission may clarify and revise the Request for Proposal (RFP) document through an addenda process in response to questions from potential proposers.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.320 Communications

PURPOSE: This rule describes the "communications" type of information exchange.

(1) Communications may be considered in rating proposals for the purpose of inclusion in the competitive range. Prior to determining inclusion in the competitive range, the commission may conduct communications to:

(A) Enhance the commission's understanding of proposals;

(B) Allow reasonable interpretation of the proposal; or

(C) Facilitate the commission's evaluation process.

(2) Prior to establishing the competitive range, the commission will hold communications with proposers:

(A) Whose past performance information is the determining factor preventing them from being placed within the competitive range and address adverse past performance information to which an proposer has not had a prior opportunity to respond; and

(B) Whose exclusion from, or inclusion in, the competitive range is uncertain.

(3) Communications will not be used to:

(A) Cure proposal deficiencies or material omissions;

(B) Materially alter the technical or cost elements of the proposal; or

(C) Otherwise revise the proposal.

(4) Communications may be used to address the following:

(A) Ambiguities in the proposal or other concerns such as perceived deficiencies, weaknesses, errors, omissions, or mistakes; and

(B) Information relating to relevant past performance.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.330 Discussions

PURPOSE: This rule describes the "discussions" type of information exchange.

(1) After receipt of proposals and determination of the competitive range, the commission may use discussions to maximize its ability to obtain the best value, based on the requirements and the evaluation factors set forth in the solicitation.

(2) If discussions are held, they will be conducted with all proposers in the competitive range. If the commission wishes to hold discussions and did not formally establish a competitive range, then the commission will hold discussions with all responsive proposers.

(3) Discussions should be tailored to each proposer's proposal. Discussions will cover significant weaknesses, deficiencies, and other aspects of a proposal (such as cost or price, technical approach, past performance, and terms and conditions) that could be altered or explained to enhance materially the proposal's potential for award. The commission's discretionary judgment will set limits for the scope and extent of discussions.

(4) In situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, the commission may hold discussions regarding increased performance beyond any mandatory minimums, and the commission may suggest to proposers that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

(5) In a competitive acquisition, the commission may employ discussions that may include bargaining. The term bargaining may include: persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

(6) In competitive acquisitions, the solicitation will notify proposers of the commission's intent to use or not use discussions. The solicitation will either:

(A) Notify proposers that discussions may or may not be held depending on the quality of the proposals received (except clarifications may be used as described in 7 CSR 10-24.300). Therefore, the proposer's initial proposal should contain the proposer's best terms from a cost or price and technical standpoint; or

(B) Notify proposers of commission's intent to establish a competitive range and hold discussions.

(7) The commission may elect to hold discussions when circumstances dictate. The rationale for doing so will be documented in the contract file. Such circumstances may include situations where all proposals received have deficiencies, when fair and reasonable prices are not offered, or when the cost or price offered is not affordable.

(8) The commission may inform an proposer during discussion that its price is considered to be too high, or too low, and reveal the results of the analysis supporting that conclusion. At commission's discretion, commission may indicate to all proposers the estimated cost for the project determined at a point subsequent to the cost estimate published as part of the public notice of Request for Qualifications provided by section 227.107.18, RSMo.

(9) Final Proposal Revisions as a Result of Discussions.

(A) The commission may request or allow proposal revisions to clarify and document understandings reached during discussions. At the conclusion of discussions, each proposer shall be given an opportunity to submit a final proposal revision.

(B) The commission will establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise proposers that the final proposal revisions shall be in writing and of the intent to make award without obtaining further revisions.

(10) The commission may further narrow the competitive range if an proposer originally in the competitive range is no longer considered to be among the most highly rated proposers being considered for award. That proposer may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the proposer has been afforded an opportunity to submit a proposal revision. Commission will provide an proposer excluded from the competitive range with a written determination and notice that proposal revisions will not be considered.

(11) The commission may determine a need to hold more than one (1) round of discussions with proposers, but only at the conclusion of discussions will the proposers be requested to submit a final proposal revision, also called best and final offer (BAFO). Thus, regardless of the length or number of discussions, there will be only one (1) request for a revised proposal (i.e., only one (1) BAFO).

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Emergency rule filed Aug. 15, 2005, effective Aug. 26, 2005, expires Feb. 23, 2006. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.413 Negotiations Allowed After Source Selection Prior to Contract Execution

PURPOSE: This rule describes when limited negotiations are allowed.

(1) After the source selection but prior to contract execution, commission may conduct limited negotiations with the selected design-builder to clarify any remaining issues regarding scope, schedule,

financing or any other information provided by that offeror. These limited negotiations will be subject to the provisions of 7 CSR 10-24.300 in the exchange of this information.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations

PROPOSED AMENDMENT

8 CSR 60-2.025 Complaint, Investigation and Conciliation Processes. The commission proposes to amend sections (7) and (9).

PURPOSE: The purpose of this amendment is to clarify that the Missouri Commission on Human Rights can administratively close cases that have been processed and closed by other civil or human rights agencies. It also adds language clarifying that the Missouri Commission on Human Rights can adopt the findings of other civil rights agencies as its investigation.

(7) Dismissal of Complaint.

(B) A complaint may be administratively closed by the executive director or his/her designee at any stage prior to setting the case for public hearing **and the commission's statutory duty to investigate shall be deemed to have been met**—

1. For failure of the complainant to cooperate with the commission;
2. Upon the commission's inability to locate the complainant;
3. For lack of jurisdiction;
4. In the absence of any remedy available to the complainant;
5. When the complainant files a suit in federal court on the same issues against the respondent named in the commission complaint;
6. When the commission has not completed its administrative processing within one hundred eighty (180) days from the filing of the complaint and the person aggrieved requests in writing a notice of the right to bring a civil action in state court, the executive director or his/her designee will administratively close the complaint and issue the notice; *[or]*

7. When the same complaint has been processed and closed by another civil or human rights agency; or

[7.] **8.** In any other circumstance**s** where the executive director deems administrative closure to be appropriate.

(9) Investigation. As part of the investigation of any complaint not dismissed prior to service of the complaint upon the respondent, the respondent shall be given an opportunity to present an oral or written statement of its position. Investigations shall be accomplished by methods including, but not limited to, fact-finding conferences, personal interviews, written interrogatories, tests, requests for production of documents, books or papers, or other materials and reviews of investigations of **or adoption of the findings of** other civil rights agencies. If a respondent refuses to cooperate with the investigation, information needed may be subpoenaed. The secretary to the commission shall issue subpoenas. Subpoenas shall be processed in accordance with the provisions of Chapter 536, RSMo. For complaints alleging violation of section 213.070, RSMo, as it relates to or involves alleged violations of section 213.040, 213.045 or 213.050, RSMo, or as it relates to or involves the alleged encouraging, aiding or abetting the violation of these sections and for complaints alleging violations of section*[s]* 213.040, 213.045 or 213.050, RSMo, the following shall apply:

*AUTHORITY: sections 213.030, [RSMo Supp. 1995] and 213.075, 213.077, 213.085 and 213.111, RSMo [1994] **2000**. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Dec. 2, 1992, effective June 7, 1993. Amended: Filed July 1, 1996, effective Dec. 30, 1996. Amended: Filed Aug. 5, 2005.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations

PROPOSED AMENDMENT

8 CSR 60-2.065 Pleadings. The commission proposes to amend sections (1) and (4) of this rule, delete section (2) and renumber the remaining sections.

PURPOSE: The purpose of this amendment is to remove the certified mail or personal service requirement on amended complaints, to remove the paper size requirements and to remove the requirement that depositions be filed with the presiding officer.

(1) After a contested case has been set for public hearing, the complaint may be amended by the commission or the complainant-intervenor within time limits set by the presiding officer, to cure technical defects or omissions, including to clarify and amplify allegations made in the complaint. Any amended complaint filed by the commission or the complainant-intervenor shall be *[served upon]* **sent to** the parties *[by certified mail or by personal service. Proof of service, as described in 8 CSR 60-2.035(2)]* and amended complaints, shall be filed with the presiding officer. The original complaint and all amendments shall be treated together as a single complaint. An answer to a complaint or amended complaint shall not be required. If no answer is filed, the allegations in the complaint or amended complaint shall be deemed denied. However, if an answer is filed, any allegation in the complaint not answered shall be deemed admitted. Any affirmative allegation and any allegation of

new matter contained in an answer shall be deemed denied without the necessity of a reply. Any answer filed must be within the time limits as may be established by the presiding officer.

[(2) All papers and copies for filing and service shall be typewritten on good white paper eight and one-half by eleven inches (8 1/2 X 11") in approximate size. Copies may be reproduced by any printing or duplicating process providing a clear image.]

[(3)] **(2)** Each document shall bear on the first page the caption, descriptive title and number of the matter in which it is filed and shall identify the party on whose behalf it is filed. Each document shall contain on the final page the name, address and telephone number and Missouri bar number of the attorney in active charge of the case, or name, address and telephone number of the party if appearing *pro se*.

[(4)] **(3)** *[The original of all depositions shall be filed with the presiding officer. A copy of interrogatories, answers to interrogatories, objections to interrogatories, if any, and responses to these objections, requests to produce, objections to requests to produce, if any, and responses to these objections, shall be filled with the presiding officer, with a copy being served on each party. The original and three (3) copies of all other pleadings and documents shall be filed with the presiding officer, with a copy being served on each party.]* Copies of all written communications to the presiding officer shall be served on all other parties.

[(5)] **(4)** When service of any notice, rule, order, pleading, motion or other paper is required, proof of service shall be filed with the presiding officer. Proof of service, except when otherwise noted, may be shown by acknowledgement or receipt or by affidavit or by written certificate of counsel making that service.

[(6)] **(5)** Any document submitted by a party that is received by the presiding officer beyond the established number of days for submittal may be disregarded by the presiding officer.

[(7)] **(6)** Where a party requires additional time to submit any document, a written request for the extension must be submitted to the presiding officer and shall include the positions of all parties to the request. The request shall be filed prior to the expiration of the time period for the document in question. The presiding officer may grant an extension of time only in situations where the need for more time is due to circumstances beyond the control of the party so requesting or where refusal to extend the time would create an undue hardship on the party so requesting. The presiding officer shall notify the party who requested the extension whether it will be allowed.

[(8)] **(7)** Where an extension of time is allowed, the presiding officer shall advise the participant who did not file the request of the extension and the new due date and that the participant shall have the same extension of time.

*AUTHORITY: sections 213.030 and 213.075, RSMo [Supp. 1992] **2000**. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Dec. 2, 1992, effective June 7, 1993. Amended: Filed Aug. 5, 2005.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations

PROPOSED ADMENDMENT

8 CSR 60-2.100 Prehearing Discovery. The commission proposes to amend section (3).

PURPOSE: The purpose of this amendment is to remove the requirement that interrogatories be filed with the presiding officer and that the limit of thirty-five (35) interrogatories be lifted.

(3) Use of Interrogatories.

(A) Interrogatories. Any party may serve upon any other party written interrogatories to be answered by the party or an agent of the party. *[The party serving the interrogatories also shall file copies of the interrogatories with the presiding officer. No party shall serve on any other party more than thirty-five (35) interrogatories in the aggregate (including subsections) without leave of the presiding officer or the consent of opposing counsel. Any party desiring to serve additional interrogatories shall file a written motion setting forth the proposed additional interrogatories and reasons establishing good cause for the additional interrogatories. Any number of additional interrogatories may be filed and served if the written consent of counsel for the party to which interrogatories are directed is attached to the interrogatories.]*

*AUTHORITY: sections 213.030 and 213.075, RSMo [Supp. 1992] **2000**. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Dec. 2, 1992, effective June 7, 1993. Amended: Filed Aug. 5, 2005.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations

PROPOSED AMENDMENT

8 CSR 60-2.130 Continuances. The commission proposes to amend section (1).

PURPOSE: The purpose of this amendment is to remove the certified mail or personal service requirement on orders granting continuances.

(1) The presiding officer may continue a public hearing or prehearing conference upon a showing of good cause. Before a party requests a continuance, the requesting party shall contact the other parties to determine whether they object to the continuance and to determine mutually acceptable dates to which the hearing or conference may be rescheduled and the information shall be included in the party's motion for continuance. When a public hearing is continued, the parties shall be notified in writing of the new hearing date within a reasonable time in advance of the new hearing date. *[Any order granting a continuance shall be served on the parties by certified mail or personal service.]*

*AUTHORITY: sections 213.030 and 213.075, RSMo [Supp. 1992] **2000**. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Aug. 5, 2005.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations

PROPOSED AMENDMENT

8 CSR 60-2.150 Evidence. The commission proposes to delete sections (7), (8) and (9) and renumber the remaining section.

PURPOSE: The purpose of this amendment is to remove the size requirements of paper evidence.

[(7) All paper exhibits shall be no larger than eight and one-half by eleven inches (8 1/2 × 11") in size and the party presenting an exhibit must submit to the presiding officer the exhibit and three (3) copies of the exhibit and shall provide one (1) copy to each of the other parties at the time the exhibit is marked.

(8) Larger exhibits are allowed; however, in order to be included in the record, the information contained in the exhibit must be reduced to paper eight and one-half by eleven inches (8 1/2 × 11") in size by the party offering the exhibit.

(9) Variation from the requirements in sections (1)–(8) will be allowed only in cases where there is no reasonable alternative.]

[(10)] **(7)** The presiding officer may take notice of judicially recognizable facts and of general, technical or scientific facts. The parties shall be notified at any time during a proceeding of material officially noticed and they will be afforded the opportunity to contest the facts so noticed. The notice required by this section shall be given to the party prior to the issuance of decision and order in the matter.

*AUTHORITY: sections 213.030 and 213.075, RSMo [Supp. 1992] **2000**. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Aug. 5, 2005.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations

PROPOSED AMENDMENT

8 CSR 60-2.210 Orders. The commission proposes to amend section (5).

PURPOSE: The purpose of this amendment is to remove the certified mail or personal service requirement for orders.

(5) Copies of orders shall be *[served by certified mail or by personal service, on]* **sent to** the complainant, respondent and all intervenors or their attorneys, accompanied by a notice of the statutory right of judicial review.

*AUTHORITY: sections 213.030, 213.075 and 213.085, RSMo [Supp. 1992] **2000**. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Dec. 2, 1992, effective June 7, 1993. Amended: Filed Aug. 5, 2005.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 10—Director, Department of Mental Health
Chapter 5—General Program Procedures

PROPOSED AMENDMENT

9 CSR 10-5.200 Report of Complaints of Abuse, Neglect and Misuse of Funds/Property. The director proposes to amend the Purpose and sections (1), (2), (5), (6) and (10).

PURPOSE: The amendment will amend the definitions of verbal abuse and sexual abuse and misuse of funds/property; add a definition of medication error; indicate which types of medication errors are subject to investigation as abuse or neglect; and limit the right to appeal findings of abuse and neglect to those which would result in placing a perpetrator's name on the DMH disqualification registry. The amendment also makes several updates in language and clarifications.

PURPOSE: This rule prescribes procedures for reporting and investigating complaints of abuse, neglect and misuse of funds/property in a residential facility, day program or specialized service that is licensed, certified or funded by the Department of Mental Health (department) as required by sections 630.135, ***630.167,*** *630.168, 630.655 and 630.710, RSMo. The rule also sets forth due process procedures for persons who have been accused of abuse, neglect and misuse of funds/property.*

(1) The following words and terms, as used in this rule, mean:

(D) Medications.

1. "Medication error," a mistake in prescribing, dispensing, or administering medications. A medication error occurs if a consumer receives an incorrect drug, drug dose, dosage form, quantity, route, concentration, or rate of administration. This includes failing to administer the drug or administering the drug on an incorrect schedule. Levels of medication errors are:

A. "Minimal," medication error is one in which the consumer experiences no or minimal adverse consequences and receives no treatment or intervention other than monitoring or observation is required;

B. "Moderate," medication error is one in which the consumer experiences short-term reversible adverse consequences and receives treatment and/or intervention in addition to monitoring or observation; and

C. "Serious," medication error is one in which the consumer experiences life-threatening and/or permanent adverse consequences or results in hospitalization or an emergency room episode of care.

2. "Serious" medication errors may be considered abuse or neglect and shall be subject to investigation by the Department of Mental Health;

*[(D)]***(E)** Misuse of funds/property, the misappropriation or conversion **for any purpose** of a consumer's funds or property by an employee *[for another person's benefit]* **or employees with or without the consent of the consumer**;

*[(E)]***(F)** Physical abuse—

1. An employee purposefully beating, striking, wounding or injuring any consumer; or

2. In any manner whatsoever, an employee mistreating or maltreating a consumer in a brutal or inhumane manner. Physical abuse includes handling a consumer with any more force than is reasonable for a consumer's proper control, treatment or management;

*[(F)]***(G)** Sexual abuse, any touching, directly or through clothing, of a consumer by an employee for sexual purpose or in a sexual manner. This includes but is not limited to:

1. Kissing;

2. Touching of the genitals, buttocks or breasts;

3. Causing a consumer to touch the employee for sexual purposes;

4. Promoting or observing for sexual purpose any activity or performance involving consumers including any play, motion picture, photography, dance, or other visual or written representation; or

5. Failing to intervene or attempt to stop, or *[prevent]* **encouraging** inappropriate sexual activity or performance between consumers; and

*[(G)]***(H)** Verbal abuse, an employee using profanity or speaking in a demeaning, nontherapeutic, undignified, threatening or derogatory manner to a consumer **or about a consumer in the presence of a consumer**.

(2) This section applies to any **director, supervisor or** employee *[or consumer]* of any residential facility, day program or specialized service, *[as defined under section 630.005, RSMo]* **that is licensed, certified or funded by the Department of Mental Health**. Facilities, programs and services that are operated by the department are regulated by the department's operating regulations and are not included in this definition.

(A) Any such *[employee who]* **person shall immediately file a written or verbal complaint if that person** has reasonable cause to believe that a consumer has been subjected to *[physical abuse, sexual abuse, misuse of funds/property, class I neglect, class II neglect or verbal abuse,]* **any of the following misconducts** while under the care of a residential facility, day program or specialized service**:** *[that is licensed, certified or funded by the department shall immediately make a verbal or written complaint.]*

1. Physical abuse;
2. Sexual abuse;
3. Misuse of funds/property;
4. Class I neglect;
5. Class II neglect;
6. Verbal abuse;
7. Serious medication error; or
8. Diversion of medication from intended use by the consumer for whom it was prescribed.

(B) A complaint under subsection (A) above shall be made to the head of the facility, day program or specialized service, and to the department's regional center, supported community living placement office or *[regional]* **district** administrator office.

(C) The head of the facility, day program or specialized service shall forward the complaint to—

1. The *[Division of Family Services]* **Children's Division** if the alleged victim is under the age of eighteen (18); or

2. The Division of Senior Services **and Regulation** if the alleged victim is a resident or client of a facility licensed by the Division of Senior Services **and Regulation** or receiving services from an entity under contract with the Division of Senior Services **and Regulation**.

(5) A *[board of inquiry, local investigator assigned by the division, or the department's central investigative unit]* **department investigator** shall gather facts and conduct an investigation regarding the alleged abuse or neglect. The investigation shall be conducted in accordance with the procedures and time frames established under the department's operating regulations. Upon completion of *[its]* **the** investigation, the *[board of inquiry, local]* investigator *[*or *central investigative unit]* shall present *[its]* written findings of facts to the head of the supervising facility.

(6) Within ten (10) working days of receiving the final report from the *[board of inquiry, local]* investigator *[or central investigative unit]*, if there is a preliminary determination of abuse, neglect or misuse of funds/property, the head of the supervising facility or department designee shall send to the alleged perpetrator a summary of the allegations and findings which are the basis for the alleged

abuse/neglect/misuse of funds or property; the provider will be copied. The summary shall comply with the constraints regarding confidentiality contained in section 630.167, RSMo and shall be sent by regular and certified mail.

(C) Within ten (10) working days of the meeting, or if no request for a meeting is received within ten (10) working days of the alleged perpetrator's receipt of the summary, the head of the supervising facility or department designee shall make a final determination as to whether abuse/neglect/misuse of funds or property took place. The perpetrator shall be notified of this decision by regular and certified mail; the provider will be copied. **If the charges do not meet the criteria in sections (11) and (12), the decision of the head of the supervising facility or department designee shall be the final decision of the department.**

(D) *[The]* **If the charges meet the criteria in sections (11) and (12), the** letter shall advise the perpetrator that they have ten (10) working days following receipt of the letter to contact the department's hearings administrator if they wish to appeal a finding of abuse, neglect or misuse of funds/property.

(F) The department's effort to notify the alleged perpetrator at his/her last known address by regular and certified mail shall serve as proper notice. The alleged perpetrator's refusal to receive certified mail does not limit the department's ability to make a final determination. **Evidence of the alleged perpetrator's refusal to receive certified mail shall be sufficient notice of the department's determination.**

(10) *[An]* **For those charges in sections (11) and (12), an** alleged perpetrator does not forfeit his/her right to an appeal with the department's hearings administrator when s/he declines to meet with the head of the supervising facility under subsections (6)(A) and (B) of this rule.

*AUTHORITY: sections 630.050, 630.135, 630.168, 630.655 and 630.705, RSMo 2000 and 630.165, 630.167 and 630.170, RSMo Supp. [2003] **2004**. Original rule filed Oct. 29, 1998, effective May 30, 1999. Emergency amendment filed March 29, 2002, effective May 2, 2002, terminated Oct. 30, 2002. Amended: Filed March 29, 2002, effective Oct. 30, 2002. Amended: Filed May 5, 2003, effective Dec. 30, 2003. Amended: Filed Aug. 11, 2005.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COSTS: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Michelle Yahnig, Office of the General Counsel, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 12—Liquor Control

PROPOSED AMENDMENT

11 CSR 45-12.091 Controlled Access Liquor Cabinet Systems. The commission is amending section (2).

PURPOSE: The commission proposes to amend this rule by clarifying that the commission is the sole liquor licensing authority for excursion gambling boats.

(2) Notwithstanding any other provision of this chapter to the contrary, any person who possesses the qualifications required by this chapter, and who now or hereafter meets the requirements of and complies with the provisions of this chapter, and who operates a qualified establishment and who is licensed to sell liquor by the drink at retail with respect to such qualified establishment, may apply for, and the *[supervisor of liquor control shall]* **commission may** issue, a license to sell intoxicating liquor in the rooms of such qualified establishment by means of a controlled access liquor cabinet system on and subject to the following terms and conditions:

(B) Prior to providing a key, magnetic card or other similar device required to attain access to the controlled access liquor cabinet in a particular room to the registered guest, the licensee shall verify that each such registered guest to whom such key, magnetic card or similar device is to be provided is not *[a minor, as defined by section 311.310, RSMo]* **under twenty-one (21) years of age**;

(C) All employees handling the intoxicating liquor to be placed in the controlled access liquor cabinet, including without limitation any employee who inventories and/or restocks and replenishes the intoxicating liquor in the controlled access liquor cabinet, shall be at least eighteen (18) years of age *[and shall obtain such employee permits as the city, county or other local governmental entity in which the qualified establishment is located requires to be obtained by employees of the restaurant operated at such qualified establishment; provided, however, that no such employee permits shall be required of any employee who handles the intoxicating liquor in the original case and who does not open such original case]*;

*AUTHORITY: sections 313.004 **and** 313.805, RSMo 2000 and 313.840, **RSMo Supp. 2004**. Original rule filed April 3, 2001, effective Oct. 30, 2001. Amended: Filed Aug. 3, 2005.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 10:00 a.m., October 18, 2005, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Health Standards and Licensure
Chapter 81—Certification

PROPOSED RESCISSION

19 CSR 30-81.020 Prelong-Term Care Screening. This rule set forth the requirement and procedure for screening by the Division of Senior Services of Medicaid-eligible and potential Medicaid-eligible individuals considering long-term care, in order to acquaint them at the earliest possible time with all services available to them, to determine on a preliminary basis their level-of-care need and to permit an effective evaluation by a Division of Senior Services worker of the resources available in the home, family and community.

PURPOSE: This rule is being rescinded because the Division of Senior Services and Regulation, Section for Senior Services is discontinuing the prelong-term care screening component from the Missouri Care Options (MCO) program. Hospitals and nursing facilities will no longer be required to request an R# for screening purposes. Individuals considering long-term care will be apprised of their options regarding home and community based services through receipt of the department's pamphlet entitled Missouri's Guide to Home and Community Based Services, as required by 19 CSR 30-88.010(9).

AUTHORITY: sections 207.020 and 208.159, RSMo 1986 and 208.153, RSMo Supp. 1991. This rule was previously filed as 13 CSR 40-81.086 and 13 CSR 15-9.020. Emergency rule filed March 14, 1984, effective April 12, 1984, expired Aug. 8, 1984. Original rule filed March 14, 1984, effective Aug. 9, 1984. Amended: Filed Aug. 3, 1992, effective May 6, 1993. Moved to 19 CSR 30-81.020, effective Aug. 28, 2001. Rescinded: Filed Aug. 12, 2005.

PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with David S. Durbin J.D., M.P.A, Deputy Department Director Senior Services and Regulation, Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

September 15, 2005
Vol. 30, No. 18

Orders of Rulemaking

MISSOURI REGISTER

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 1—Organization and Description of Board

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.110, 338.140 and 338.280, RSMo 2000, the board amends a rule as follows:

4 CSR 220-1.010 General Organization **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1119–1120). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.010, 338.140, 338.240 and 338.280, RSMo 2000 and 338.210, RSMo Supp. 2004, the board amends a rule as follows:

4 CSR 220-2.010 Pharmacy Standards of Operation **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1120). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.140, RSMo 2000 and 338.220, RSMo Supp. 2004, the board amends a rule as follows:

4 CSR 220-2.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1120–1122). The section with changes is reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received one (1) comment.

COMMENT: The National Association of Chain Drug Stores (NACDS) submitted a comment regarding the board's proposed requirement that prescriptions be provided by a practitioner who has performed a sufficient physical examination and clinical assessment of the patient. NACDS stated that although they agree with the board that a practitioner should not prescribe drugs without performing a sufficient physical examination and clinical assessment and that the use of a form, questionnaire and/or telephone interview is not sufficient to provide or execute a prescription. However, in most instances, a pharmacist has no way to determine if the practitioner has performed a sufficient physical examination and clinical assessment. The board would not be able to effectively enforce this rule against pharmacists, as pharmacists would have no way to comply. To better achieve the board's goal of ensuring that prescriptions are written only for a valid medical purpose, NACDS suggested the following language: "A pharmacist shall not dispense a prescription drug if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order for such drug was issued on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation, all without a valid preexisting patient-practitioner relationship."
RESPONSE AND EXPLANATION OF CHANGE: The board agreed with the concern raised and modified the text of the proposed amendment by removing the last sentence of section (11), and adding the sentence proposed by NACDS.

4 CSR 220-2.020 Pharmacy Permits

(11) Prescriptions processed by any classification of licensed pharmacy must be provided by a practitioner licensed in the United States

authorized by law to prescribe drugs and who has performed a sufficient physical examination and clinical assessment of the patient. A pharmacist shall not dispense a prescription drug if the pharmacist has knowledge, or reasonably should know under the circumstances, that the prescription order for such drug was issued on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation, all without a valid preexisting patient-practitioner relationship.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.140 and 338.280, RSMo 2000 and 620.010.15(6), RSMo Supp. 2004, the board amends a rule as follows:

4 CSR 220-2.050 Public Complaint Handing and Disposition Procedure **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1123). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 5—Drug Distributor

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.333, 338.343 and 338.350, RSMo 2000, the board amends a rule as follows:

4 CSR 220-5.030 Definitions and Standards for Drug Wholesale and Pharmacy Distributors **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1123–1124). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250, 392.240, 392.250, and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004, the commission adopts a rule as follows:

4 CSR 240-2.061 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2005 (30 MoReg 687–689). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held May 16, 2005, and the public comment period ended May 15, 2005. Five (5) written comments were received and five (5) persons commented at the hearing. Written comments were received from Southwestern Bell Telephone, L.P., d/b/a SBC Missouri; CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel; the staff of the Missouri Public Service Commission; the Office of the Public Counsel; and jointly from Bill Hopkins, President of the Bollinger County Chamber of Commerce, Gary Shrum, Administrative Assistant to the City of Marble Hill, Bruce Johnson of The El-Nathan Home, and Joan Binnie. Persons commenting at the hearing were: Michael Dandino on behalf of the Public Counsel; John Van Eschen on behalf of the staff of the Missouri Public Service Commission; Craig Unruh on behalf of SBC Missouri; Arthur Martinez on behalf of CenturyTel and Spectra; and Larry Dority on behalf of ALLTEL Missouri, Inc. ALLTEL concurs in the written comments of CenturyTel and Spectra. The commenters questioned the commission's authority to go forward with the rule, the fiscal impact of the rule, and suggested changes to sections (2), (3), (5), (6), (7), (9), (11), (12), (13), (14), (15), and (16).

COMMENT: Bill Hopkins, President of the Bollinger County Chamber of Commerce, Gary Shrum, Administrative Assistant to the City of Marble Hill, Bruce Johnson of The El-Nathan Home, and Joan Binnie filed a joint written comment in support of the commission adopting a rule. The commenters stated that they believe expanded calling scopes are needed in rural areas.

RESPONSE: The commission thanks the commenters for their comment. The commission finds that the rule should be adopted as more fully set out below.

COMMENT: John Van Eschen testified on behalf of the staff of the Missouri Public Service Commission. Marc Poston and Natelle Dietrich also participated in the written comments and the drafting of the rule. Staff's comments were generally in support of the rule. Staff stated that a task force was set up by the commission in Case No. TW-2004-0471 for the purpose of investigating expanded local calling scopes. The task force's final report is included in the record. The task force recommended that the commission promulgate a rule that would create a process for the filing of applications to expand local calling scopes. Staff believes the proposed rule provides a "sufficient process" for the filing of applications to expand local calling scopes.

Mr. Van Eschen explained that in drafting the rule, staff made certain changes to the proposal of the task force. Mr. Van Eschen explained the deviations in the proposed rule. Mr. Van Eschen also testified about the prior history of expanded calling plan rules at the commission, stating that the extended area service (EAS) rule was not very successful in that very few, if any, new EAS routes were implemented under that rule while it was in existence.

Mr. Van Eschen testified that alternatives for expanded calling scopes have increased over the last ten (10) years to include wireless calling, prepaid calling cards, and other long distance calling plans. Mr. Van Eschen also testified that he expects the options to continue to increase. Mr. Van Eschen stated that the task force attempted to

examine expanded calling plans that were available on an exchange-specific basis but that the task force did not try to determine consumer interest through surveys or public hearings.

Mr. Van Eschen testified in response to a question by Commissioner Murray, that it may be helpful for the commission to have more evidence of a need for this rule and to determine the commission's authority to expand calling scopes before proceeding with the rule. The commission asked both of these questions of the task force, but the task force did not reach a conclusion about either of them.

RESPONSE: The commission notes that it has five (5) cases currently pending before it requesting expanded calling scopes. Those cases have been pending in one form or another for several years. In addition, the commission has reviewed the task force's final report recommending that a rule be adopted. Thus, the commission finds that it should not delay any further in establishing a process to handle this type of request. For those reasons and the reasons set out below, the commission determines that this rule should be adopted.

COMMENT: Michael Dandino, Senior Public Counsel, testified at the hearing on behalf of the Office of the Public Counsel and filed written comments. Mr. Dandino's comments were generally in support of the proposed rule because it establishes a process by which citizens can address their concerns regarding expanded calling scopes.

Mr. Dandino testified that in calendar years 2000 and 2001, seven hundred sixty (760) Wright City customers asked for expansion of the Metropolitan Calling Area (MCA) plan, two hundred fifty (250) Lexington businesses and residents asked for expansion of the Kansas City MCA, one hundred fifty (150) customers of SBC Missouri complained when SBC Missouri discontinued its local plus service, and customers in Greenwood, Ozark, and Rockaway Beach have all asked for expanded calling options. Mr. Dandino testified that without a rule in place, these requests have not had an adequate process within which to be heard. Mr. Dandino testified that this rule would at least put in place a process to give these requests timely and meaningful consideration.

Mr. Dandino cautioned that an attempt to fill in every gap in the rule could make the rule too complex to be easily used and understood by the general public. Mr. Dandino stated that the rule should provide for access to the commission and not be so cumbersome as to be an impediment.

Mr. Dandino testified that in past cases involving the MCA, the commission has not determined if it has authority to order expanded calling under price cap regulation and for competitive companies. He stated that the commission has also not determined whether expanded local calling scopes directed by the commission are a suitable remedy for the complaints and desires of consumers. Mr. Dandino argued that the commission has authority to determine and provide for just and reasonable expanded calling plans. Mr. Dandino also urged the commission not to abandon expanded calling scopes as a remedy until the companies prove that there are truly viable alternatives that give parity in rural areas, are priced reasonably, and are substitutable for MCA-type calling plans.

Mr. Dandino argues that the price cap statute does not affect expanded calling plan authority. Subsection 392.245.6, RSMo, (all statutory references are to the *Revised Statutes of Missouri* 2000, unless otherwise noted) provides that the price cap statute does not "alter the commission's jurisdiction over quality and conditions of service" and does not relieve companies from the obligation to comply with minimum basic local and interexchange service rules. The only restrictions are subsection 392.240.1, relating to rates being set based upon cost of service, and consideration of the rate of return under subsection 392.245.7. According to Mr. Dandino, price cap companies remain subject to the remainder of section 392.245.

RESPONSE: The commission agrees with the Office of the Public Counsel that it should not delay any further in establishing a process to handle requests for expanded calling scopes. The commission also determines, as set out more fully below, that it has jurisdiction to proceed with this rule. For those reasons and the reasons set out below, the commission determines that this rule should be adopted.

COMMENT: SBC Missouri filed written comments and testified at the hearing in opposition to the rule. SBC Missouri made the following arguments that the commission does not have jurisdiction to proceed with this rule.

SBC Missouri first argued that the rule violates the due process rights of the telecommunications companies because it does not guarantee a hearing before affecting the individual company's property rights. Proposed section 4 CSR 240-2.061(13) states that a hearing "may" be held. SBC Missouri argued that the rule must mandate a hearing.

SBC Missouri next argued that the rule violates section 392.200.9, RSMo Supp. 2004, because it mandates a revision to an exchange boundary without the consent of the affected telephone company.

SBC Missouri's third argument is that the rule violates section 392.245.11, RSMo, for price cap companies, because pricing and new service offering decisions should be left to the discretion of the price cap regulated company.

SBC Missouri's fourth argument is that the rule violates Missouri case law which holds that the commission's authority to regulate does not include the right to dictate the manner in which a company shall conduct its business.

Finally, SBC Missouri argued that the rule is not good public policy. SBC Missouri argues that in the competitive world the commission should not be mandating calling plans, especially where there are already numerous other options for expanded calling to meet the current customers' needs.

RESPONSE AND EXPLANATION OF CHANGE: The commission determines that it has jurisdiction to move forward with this rule because: 1) it has general supervisory jurisdiction over all telecommunications companies under section 386.250 and Chapter 392; 2) subsection 392.240.2 gives the commission the jurisdiction to "determine the just, reasonable, adequate, efficient and proper regulations, practices, equipment and service" of telecommunications companies; 3) the competitive companies are not exempt from section 392.470, which gives the commission authority to impose conditions on telecommunications companies that it deems reasonable and necessary; 4) section 392.250 grants the commission authority to order changes or additions to promote public convenience and adequate service; and 5) such expanded calling scopes would be consistent with the purposes of Chapter 392.

In the original MCA case, commission Case No. TO-92-306, the commission determined that it has the statutory authority under section 392.240 to set just and reasonable rates and the reasonable and sufficient service to be offered when the rates or service supplied by telecommunications companies is unreasonable, inadequate, or insufficient. The commission also determined that it has authority pursuant to section 392.250 to order repairs, improvements, changes, or additions to be made to promote the convenience of the public. In addition, the commission found that existing facilities and services did not meet the needs of customers. The commission set the expanded calling plans and ordered the local exchange companies to implement the plans to provide efficient and adequate service.

Later, the commission opened Case No. TO-99-483 to examine the provisioning of these expanded calling plans after the passage of the Telecommunications Act of 1996. The commission found that there was no evidence to suggest that the current plans and prices were not in the public interest. The commission also determined that it still had jurisdiction over those plans, even after the passage of the act.

The commission also opened Case No. TW-2004-0471 in order to further investigate calling scope issues. The task force set up in that

case filed a report, but did not address the question of the commission's authority. The task force did say that "legislative action may be necessary to address the needs . . . [of consumers.]"

With regard to the argument that section (13) should make a hearing mandatory, the commission finds that its obligation to provide adequate due process is not removed because the rule is permissive, rather than prescriptive. Under *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989), however, all that is required is that affected parties be given the opportunity for a hearing. Thus, by leaving the rule permissive, if there is agreement to the calling scope expansion or no hearing is requested, then the commission could proceed on the pleadings without necessarily holding a hearing. If a hearing is requested, or if there is no agreement, then the commission would hold a hearing. Thus, the rule as written does not violate the incumbent local exchange carriers' due process rights.

SBC Missouri also argues that the rule violates subsection 392.200.9, RSMo Supp. 2004, because the rule mandates a revision to an exchange boundary without the consent of the affected telephone company. This argument is not persuasive because this rule does not change an exchange boundary. Any calling scope expansion resulting from this rule would be accomplished either with the agreement of the local exchange carrier or, more likely, by including whole exchanges in the expanded calling scopes without altering those exchange boundaries.

SBC Missouri further argues that by modifying the MCA plans, the commission would be usurping the companies' management decisions in violation of Missouri case law. The Missouri Western District Court of Appeals, however, rejected this argument in the appeal of the commission's original order implementing the MCA plan. *State of Missouri, ex rel. MoKan Dial, Inc. v. P.S.C.*, 897 S.W.2d 54 (Mo. App. 1995). The court stated that it did not "see how [a]ppellants' management functions have been damaged." *Id.* The court also stated that subsection 392.240.1 "invests the commission with authority to revise and set reasonable rates for tolls and other services when customer needs are not being met and service is inadequate." *Id.* at 55.

Finally, SBC Missouri argues that the rule is not good public policy. The task force stated in its report that there was still a need for a rule to process these types of applications. Michael Dandino on behalf of the Office of the Public Counsel also testified that in rural areas and other places where competition is not strong there may still be a need for the commission to direct these types of expanded calling plans. In addition, the commission received a written comment from telecommunications users stating that expanded calling scopes were necessary. Further, the commission notes that it currently has pending before it five (5) applications for expanded calling areas. Thus, there has been sufficient interest in at least five (5) instances to start proceedings, yet there is no set procedure for the commission to follow in processing these types of applications. By going forward with the rule, the commission will be setting up a procedure for handling these cases more efficiently and expeditiously. The commission finds that it is good public policy to have a procedure in place to deal with these types of applications.

After reviewing all the evidence in this rulemaking record, the commission determines that, depending on the specific factual circumstances, it has authority under the above-mentioned sections of Chapters 386 and 392 to continue to order all telecommunications companies to offer expanded calling scopes. Furthermore, the *MoKan Dial* case provides support for this commission's authority. SBC Missouri has not convinced the commission that it should not move forward with this rule. Therefore, the commission finds that it should continue with this rulemaking, as recommended by the task force, so that there is a clear process in place to promote the efficient processing of these applications and to safeguard the rights of both the telecommunications customers and the telecommunications companies within this state.

No change to the rule text is made as a result of this comment; however, the commission will include additional statutory citations in the authority section of the rule.

COMMENT: CenturyTel and Spectra (collectively referred to as "CenturyTel") filed joint comments and testified at the hearing. (ALLTEL Missouri concurred in the written comments of CenturyTel and Spectra and thus where the commission refers to CenturyTel's written comments it is also referring to ALLTEL's concurrence in these comments.) Generally, CenturyTel's witness, Mr. Martinez, stated that he believed the commission went beyond the recommendations of the task force and should withdraw the rule. Mr. Martinez also stated that the commission may not have the authority to prescribe MCA calling scopes and that doing so may contradict Missouri case law that prohibits the commission from dictating management decisions of certain companies. CenturyTel stated in its written comments that the requirement for a hearing in section (13) should be mandatory to protect the carriers' due process rights.

In response to questions from Commissioner Murray at the hearing, Mr. Martinez stated that he is aware of a "vocal minority" that is interested in expanded calling around the Rockaway Beach community, but that he is not aware that the sentiment is shared by the Branson community. Mr. Martinez also testified that there are wireless providers, prepaid calling cards, and flat-rated calling plans that are options for expanded calling in many areas.

Mr. Martinez further testified that if MCA plans are approved under the rule, that anyone taking advantage of the change (or being forced to change in the case of a mandatory MCA) would have to change his or her phone number. Because of the many alternatives available, Mr. Martinez does not believe it would ever be in the public interest to grant one of these applications. Mr. Martinez testified that he thinks the rule will create false hopes because consumers have no idea how much it costs the companies to provide these types of plans.

RESPONSE: The commission has responded above to the question of the commission's jurisdiction to proceed with this rule. The commission has also previously found that going forward with this rule is in the public interest. Further, the commission has found that the hearings in these cases should not be made mandatory, as there are certain instances when a hearing would not be necessary.

With regard to educating the general public that certain changes in calling scopes will necessitate changing phone numbers, the rule offers the opportunity for meetings between the applicants and the telecommunications carrier as well as public hearings. In making a public interest determination, the commission will most likely have to consider on a case-by-case basis how well the affected customers understand numbering requirements.

The commission is aware of many alternatives available to telecommunications consumers in the current competitive environment. The commission is also aware, however, that it currently has five (5) pending cases requesting expanded calling scopes. In addition, the findings of the task force and the comments of the Office of the Public Counsel suggest that a need for this rule exists. Thus, the commission determines that it should go forward with this rule.

COMMENT: Larry Dority testified at the hearing in opposition to the rule on behalf of ALLTEL Missouri, Inc. Mr. Dority concurred in the written comments of CenturyTel. In addition, Mr. Dority testified that it was premature to move forward with this rule. Mr. Dority argued that the commission should work through the pending calling scopes cases before going forward with this rule. Mr. Dority stated that he believes competition will meet customers' needs. Mr. Dority further testified that when an agency tries to make rules instead of allowing competition to govern, some companies will be at a competitive disadvantage.

RESPONSE: The commission determined above that it has the authority to promulgate this rule and that doing so would be in the public interest.

COMMENT: SBC Missouri commented that the commission's statement that no fiscal note is needed is inaccurate because the rule would cost private entities more than five hundred dollars ($500) in the aggregate. SBC Missouri states that there will be costs involved in evaluating the proposed calling plan, as well as determining a cost of the proposed plan. CenturyTel also commented that the filing of illustrative tariffs and supporting documents in sections (11) and (12) of the rule create a fiscal impact to private entities.

RESPONSE AND EXPLANATION OF CHANGE: Discussions of the MCA plan and expanded calling scope issues have taken place at the commission, during local public hearings, and within the industry for many years. Because of these discussions, inquiries from the Office of the Public Counsel, and comments from numerous consumers, the commission set up the task force in Case No. TW-2004-0471. The task force was made up of industry personnel, legislators, consumers, the Office of the Public Counsel, and the staff of the Missouri Public Service Commission. The task force met on five (5) separate occasions to discuss calling scope issues and subcommittees met on two (2) other occasions. The task force concluded with the filing of its final report in which it recommended the current rulemaking, including that the commission get information from the affected companies on the financial costs of any proposed plans.

No potential fiscal impact of the rule was discussed during the task force meetings or was included as part of the task force's final report. Thus, when proposing this rule, the commission determined that the rule would not cost more than five hundred dollars ($500) in the aggregate to private entities. The commenters, however, bring to the commission's attention that by requiring the filing of illustrative tariffs and supporting documents, the companies will necessarily have expenses in determining their cost to implement the proposal.

The commission notes that five (5) calling scope expansion cases are proceeding at the commission under general commission procedures without any specific rule in place. Under those cases, the companies are being required to determine their costs in providing the expanded service, because without that information the commission cannot make a public interest determination. The commission determines that it is in the public interest to have a uniform procedure for the processing of these types of applications. Thus, the commission finds that it should proceed with this rulemaking.

The commission has revised its fiscal note to account for the costs to the companies of complying with the rule. The commission made several assumptions about the number of cases expected and used cost estimates provided by some potentially affected companies.

COMMENT: Mr. Martinez on behalf of CenturyTel commented that the rule should set out specific criteria for determining a community of interest. Mr. Martinez did not suggest any specific criteria for the commission to adopt. Mr. Van Eschen on behalf of the staff of the Missouri Public Service Commission testified that the definition of "community of interest" in subsection (1)(B) is the definition anticipated by the task force.

RESPONSE: The task force recommended the definition as set out in the proposed rule. In addition, the task force specifically stated in its final report at subparagraph G.2, "Out of necessity, the communities of interest criteria cannot be reduced to simple descriptions, rules or numbers, but shall remain a matter of some subjectivity for the commission to determine on a case-by-case basis." Because the definition is as the task force intended it to be, the commission determines that no change to this subsection is needed.

COMMENT: SBC Missouri and CenturyTel commented that section (2) of the rule should include a requirement that if the application is filed by a group of individuals, those individuals must be represented by an attorney under sections 484.010 and 484.020, RSMo. Staff testified in favor of requiring an attorney to represent a group of individuals so that the Office of the Public Counsel is not faced with a potential conflict of interest by attempting to represent the needs of a small group of customers. Staff commented that no change is necessary because the rule requires applications to be filed in compliance with rule 4 CSR 240-2.060 which would require a Missouri attorney must represent these individuals.

RESPONSE: Although commission rule 4 CSR 240-2.060 does not require a Missouri-licensed attorney, it requires the signature of an authorized representative. Sections 484.010 and 484.020 require that no individual can represent another individual unless that person is a Missouri-licensed attorney. Thus, under current Missouri law, a Missouri-licensed attorney will be required to represent a group of individuals. The commission determines that it need not repeat in its rules the specific requirements of Missouri law. Therefore, the commission finds that no change to the rule is necessary as a result of this comment.

COMMENT: SBC Missouri commented that subsections (2)(A) and (3)(F) are not clear as to whether the fifteen percent (15%) criterion includes all incumbent and alternative local exchange company subscribers. SBC Missouri and CenturyTel both commented that the applicants would not have access to necessary information to determine the fifteen percent (15%) threshold. They also commented that it was not clear how that threshold or the signatures would be verified.

SBC Missouri suggests that the threshold should be based on subscribers to residential basic local service and that it should be at least thirty percent (30%). CenturyTel also commented that the applicants will not have access to other information required such as the rate and type of plan. CenturyTel made this latter argument with regard to subsections (2)(B) and (3)(C), (D), and (E). CenturyTel also commented that it will be difficult for the applicants to obtain this information because the incumbent local exchange companies (ILECs) are not involved in the application process until sixty (60) days after the filing of the application.

Mr. Van Eschen testified that in his opinion, fifteen percent (15%) is a significant number of subscribers to express an interest and that fifteen percent (15%) was the number recommended by the task force. Mr. Van Eschen also testified that subsection (3)(F) allowing only one (1) signature per subscriber on the application is consistent with the suggestions of the task force report.

RESPONSE AND EXPLANATION OF CHANGE: The task force recommended the fifteen percent (15%) threshold so that applications for increased calling scopes would require a substantial number of interested persons, yet the rule would not be so burdensome as to exclude investigation into expanded calling scopes entirely.

The companies have an opportunity to object to the applications and will thus have the opportunity to question the validity and number of signatures. The information requested in subsections (2)(B) and (3)(C), (D) and (E) is information that only the applicants can provide. These subsections set out the plan the applicants are proposing. No changes are needed to these subsections. The commission agrees that subsections (2)(A) and (3)(F) should be clarified to state that the criterion is fifteen percent (15%) of the *incumbent* local exchange carrier subscribers. Subsections (2)(A) and (3)(F) will be amended.

COMMENT: SBC Missouri objected to the inclusion of subsection (2)(B) allowing any governing body of a municipality or a school board to propose a plan without showing that customers want and are willing to pay for the service.

RESPONSE: The task force recommended that any governing body of a municipality or a school board be allowed to be an applicant. SBC Missouri appears concerned that these governing bodies will have insufficient knowledge of whether their constituents will want or be willing to pay for expanded calling scopes. The commission makes the contrary determination. Local governing boards are better situated to know the wants and needs of the communities of interest surrounding them. Therefore, the commission finds that no change to this subsection should be made.

COMMENT: SBC Missouri commented that a new section should be added to require that in an application for a mandatory plan, the applicants must provide evidence that at least thirty percent (30%) of the subscribers to residential service not currently subscribing to the MCA plan are willing to subscribe to the service at a compensatory price.

RESPONSE: The task force recommended the fifteen percent (15%) threshold so that applications for increased calling scopes would require a substantial number of interested persons, yet the rule would not be so burdensome as to exclude investigation into expanded calling scopes entirely. Furthermore, the applicant may not at the time of application have sufficient information to determine a "compensatory price." Therefore, the commission finds that it should not alter the recommendation of the task force on this point. Rather, the number of interested persons willing to pay the compensatory price is likely to be a fact put forth in evidence as the case progresses and after illustrative tariffs are filed which set forth a compensatory price.

COMMENT: SBC Missouri commented that section (2) should be amended so that applicants seeking a change to MCA service that will add a new exchange to the MCA plan must provide evidence that the customers are willing to change their telephone numbers in order to subscribe to MCA service.

RESPONSE: The task force did not recommend this added criterion for applications. The rule provides for additional public input, such as public hearings, as the process progresses. The willingness of customers to change their phone numbers will likely depend on the calling scope and price for the service. Because these items may change as the applicants and the company meet and exchange information and after the illustrative tariffs are filed, the commission determines that providing this information with the initial application would be premature. Therefore, no changes to this section are needed as a result of this comment.

COMMENT: SBC Missouri commented that subsection (2)(G) should be amended to require the applicants to advise the commission of the competitive alternatives that are available in the community and why those alternatives are inadequate. Mr. Van Eschen testified that subsection (3)(B), requiring that the application include a statement explaining how the proposed plan will satisfy the objectives of the community of interest, will provide the commission with information from the applicants' point of view as to how the request will address the applicants' needs. Mr. Van Eschen testified that section (4) was added by staff during the drafting of the rule to ensure that each person is aware of the terms of the requested plan when signing the application.

RESPONSE: The commission finds that the public may not be aware of all of the competitive alternatives. It may be this very lack of knowledge that drives an applicant to request an expanded calling scope. Under the procedure set out in the rule, the companies have an opportunity to meet with the applicants, at which time the company may want to educate the applicants about alternatives. In addition, the company is free to include information about alternatives in its response to the applicants' final recommendation and, if necessary, present evidence of these alternatives at a hearing. Furthermore, subsection (3)(B) already requires that the applicants state how the plan will satisfy the needs of the community of interest. For these reasons, the commission determines that no change to this subsection is needed as a result of this comment.

COMMENT: SBC Missouri commented that section (5) should be amended to require that the commission give notice to prepaid local and interexchange carriers (IXCs) in the same manner as provided to the local exchange carriers. Mr. Van Eschen testified that because of the large numbers of IXCs, the rule provides for those companies to get only electronic notice of the applications. Mr. Van Eschen pointed out that because the commission's electronic filing and information system (EFIS) database may not have completely up-to-date e-mail addresses for the approximately six hundred (600) IXCs certificated in the state, not all IXCs will receive notice if this method is utilized. Staff still recommends that IXCs receive notice electronically.

RESPONSE AND EXPLANATION OF CHANGE: The commission determines that SBC Missouri is correct that prepaid providers should be given notice of the application since their calling scopes may be affected by the application. Therefore, the commission will amend section (5) to provide notice to prepaid providers.

COMMENT: SBC Missouri commented that section (6) should be amended to require that all carriers, not just incumbent local exchange carriers, serving exchanges that are affected by the proposal would be automatically made a party to the case. Staff commented that in drafting the rule it limited the entities that were automatically made a party to the case to only the ILECs. Staff stated in its written comments that the commission does not have a means to easily identify where competitors, such as Voice over Internet Protocol (VoIP) providers and wireless carriers are operating.

RESPONSE: Because of the large numbers of certificated (approximately six hundred (600) IXCs alone) and noncertificated carriers within the state, it would be too cumbersome and inefficient to automatically make each carrier serving an exchange a party to the case. It would also be extremely costly for each party to have to serve its filings on that many additional parties. The rule provides for intervention of interested parties and therefore, the commission determines that no changes to this rule as proposed are needed as a result of this comment.

COMMENT: SBC Missouri commented that the time for convening a conference of the parties is too restrictive and should be extended from sixty (60) days to one hundred twenty (120) days. Staff provided written comments stating that the provision requiring the parties to meet to discuss certain items within sixty (60) days of the filing of the application does not prohibit the parties from exploring alternative intercarrier compensation arrangements for other types of proposals. The provision also does not require the parties to agree to alternative intercarrier compensation arrangements that do not involve access charges; it simply places an expectation on the parties to seriously consider intercarrier compensation arrangements that do not involve access charges. Staff supports the section as written.

RESPONSE: One purpose of promulgating this rule is to create a procedure to more efficiently and expeditiously process applications for expanded calling scopes. The initial meeting will allow the parties to discuss the merits of the application and whether there are alternative solutions. It is not expected that the telecommunications carriers will have all the costs and details to the plan worked out at this first meeting. Rather, this meeting allows the applicants to determine if changes to its proposal are required. For these reasons, the commission determines that no changes to section (7) are needed.

COMMENT: CenturyTel commented that section (9) be amended to include a deadline for the filing of a statement that the application remains unchanged or identifying the modifications requested. No specific changes were suggested.

RESPONSE: The commission disagrees that any change should be made. Applications before the commission may already be dismissed for failure to prosecute under 4 CSR 240-2.116(2) if no action is taken in ninety (90) days. Because the applicants are responsible for pursuing the application and the carriers are not required to make any further filings under the rule until the applicants' final recommendation is filed, the carriers suffer no harm by the applicants failing to present their final recommendation in a timely fashion. For these reasons the commission determines no change to section (9) is needed as a result of this comment.

COMMENT: CenturyTel suggests that the ten (10) days allowed in section (10) may not be adequate time for response to the applicants' final recommendation. No alternative time period was suggested.

RESPONSE: In order to ensure that the case is not delayed unreasonably, the commission determines that the ten (10)-day deadline is sufficient. Ten (10) days for responses is the commission's standard response period. In addition, the responding party may request additional time if necessary. The commission finds that no change is needed as a result of this comment.

COMMENT: SBC Missouri and CenturyTel commented that the commission should add a provision that requires the commission to rule on any objections to the final recommendations before the ninety (90)-day period set out in section (11) starts to run. SBC Missouri suggests that the commission issue an order determining that the requisite numbers of subscribers have filed the application and that there is sufficient evidence of a lack of competitive alternatives, which would satisfy the applicants' needs, before the phone companies are required to file illustrative tariffs. Staff, in its written comments, opposed adding an additional step whereby the commission would evaluate the merits of the application before the filing of illustrative tariffs. Staff stated that the commission cannot make an informed decision until it has information about revenue and expense requirements. SBC Missouri also suggests that sections (11) and (12) be amended to require that telecommunications carriers file proposed tariff sheets offering a calling plan that would meet the applicants' needs rather than tariff sheets that would implement the plan proposed by the applicants.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with its staff that it cannot evaluate the merits of the proposal until after all the evidence, including the illustrative tariffs, is filed. The commission finds, however, that it should rule on objections to the technical sufficiency of the application before the telecommunications carrier spends its resources preparing illustrative tariffs and determining the cost of the proposal. For this reason, the commission determines that it should amend section (11) to state that the illustrative tariffs are due ninety (90) days after the issuance of an order by the commission ruling on any objections as to the technical sufficiency of the application.

The commission determines that it should not amend the section to allow the carrier to provide tariffs that "meet the applicants' needs" rather than tariffs which "implement the proposal." It is the applicant's proposal and, therefore, the commission will be ruling on the merits of that proposal after all the evidence, including a hearing if necessary, have been presented. If the illustrative tariffs provided do not actually present the proposal suggested by the applicants, the commission cannot properly evaluate the merits of the application. For this reason, the commission will not adopt this particular change proposed by SBC Missouri.

COMMENT: CenturyTel suggested that the ninety (90)-day deadline in section (11) may not be adequate. No alternative time period was suggested.

RESPONSE: No other carrier commented that this time period was not sufficient if the commission promptly ruled on objections to the proposal. The commission finds that ninety (90) days as set out in its amended section (11) is sufficient. No change will be made as a result of this comment.

COMMENT: SBC Missouri suggests that the public hearings in section (13) should be mandatory.

RESPONSE: The commission agrees with SBC Missouri that input from the public regarding expanded calling scopes will be desired in almost every instance. The commission finds, however, that the proposed rule should not be changed so that in the unusual circumstance where all parties are in agreement, no hearing would necessarily have to be held. Therefore, no changes to section (13) will be adopted.

COMMENT: SBC Missouri comments that the provision of evidence in section (14) should be voluntary.

RESPONSE: Without the provision of evidence by the parties, the commission will have nothing upon which to base its decision. Therefore, the commission determines that no change to section (14) is needed as a result of this comment.

COMMENT: SBC Missouri suggests that section (15) be amended to include a requirement that the commission consider competitive offerings when making its decision.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that competitive offerings will be a factor it considers when determining whether calling scopes should be expanded. For this reason, the commission agrees with SBC Missouri that section (15) should be amended to include consideration of competitive alternatives.

COMMENT: Staff proposes that section (16) be revised to address any concerns that the commission might make a decision to modify an application without evidence in the record to support the modification.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that staff's proposed change will clarify that the commission will only make decisions supported by the evidence in the record. Therefore, the commission will adopt section (16) as amended by staff's proposed change.

4 CSR 240-2.061 Filing Requirements for Applications for Expanded Local Calling Area Plans Within a Community of Interest

(2) An application filed with the commission shall initiate a request for an expanded local calling area plan. The specific provisions herein shall supersede general rules contained elsewhere in this chapter. An application may be filed on behalf of:

(A) At least fifteen percent (15%) of the incumbent local exchange telecommunications service subscribers within the requesting exchange; or

(B) A governing body of a municipality or school district within the requesting exchange.

(3) The application shall comply with 4 CSR 240-2.060 and shall clearly identify and include:

(A) A description of the expanded local calling area plan;

(B) A statement explaining how the proposed plan will satisfy the objectives of the community of interest;

(C) The proposed price and terms of the plan;

(D) A statement of whether the proposed plan will be optional or mandatory for all customers in the expanded local calling scopes;

(E) A statement as to the toll or local classification of the calling plan traffic and associated inter-company compensation, if any, to be utilized to facilitate the plan; and

(F) A petition, if initiated by incumbent local exchange service subscribers as described in subsection (2)(A) above, which shall include the signatures of such subscribers, and only one (1) signature per subscriber is allowed.

(5) The commission will provide notice of the filing of the application to all local exchange telecommunications companies in the affected area. The filing of the application will initiate an Electronic Filing and Information System (EFIS) notification to all interexchange telecommunications carriers. All notifications shall include instructions on how to obtain a copy of the application.

(11) Within ninety (90) days after the commission issues an order ruling on objections to the technical sufficiency of the application or, if none, within ninety (90) days after the filing in section (9) above, any

telecommunications carrier directly affected by the proposal shall file illustrative tariff sheets to implement the applicant's proposal.

(15) The commission, in its findings, will determine whether the proposed calling plan is just, reasonable, affordable, and in the public interest. In making these determinations, the commission will consider evidence on the competitive alternatives available, competitive implications, revenue impacts, and company and social costs of implementing the proposed expanded calling plans balanced against the objectives of the community of interest. The commission will also weigh any costs against benefits to the community of interest when making its determination.

(16) Based on the evidence in the record, the commission may modify the proposed rates, terms or conditions in its decision on the application.

AUTHORITY: sections 386.250, 392.240, 392.250, and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004. Original rule filed March 4, 2005.

REVISED PRIVATE COST: The commission estimates that this rule will have a fiscal impact on private entities of two hundred two thousand five hundred dollars ($202,500) in the aggregate over the next five (5) years.

REVISED FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	4 CSR 240-2.061 Filing Requirements for Applications for Expanded Local Calling Area Plans Within a Community of Interest
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification* by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
4	Class A Local Telephone Companies	$127,500
37	Class B Local Telephone Companies	$75,000

* Class A Telephone Companies are incumbent local telephone companies with more than $100,000,000 annual revenues system wide and Class B Telephone Companies are incumbent local telephone companies with $100,000,000 annual revenues or less system wide.

III. WORKSHEET

Year 1: 4 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $54,000.

Year 2: 4 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $54,000.

Year 3: 3 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $40,500.

Year 4: 3 applications filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $40,500.

Year 5: 1 application filed X ($8,500 for 1 large company + $5,000 for 1 small company) = $13,500.

$54,000 + $54,000 + $40,500 + $40,500 + $13,500 = $202,500 for all companies in the aggregate.

IV. ASSUMPTIONS

1. Information available to the Commission at the time the proposed rule was filed indicated that private entity costs were not greater than $500 in the aggregate. As a result of the comments, the Commission has determined that private entities would have a fiscal impact greater than $500 in the aggregate.

2. Applications filed under this rule will request expanded calling scopes for incumbent local exchange companies and not for competitive local exchange companies. Some incumbent local exchange companies have reviewed the proposed rule and have provided estimates of the fiscal impact. The above information is based on those estimates.

3. Fiscal year 2005 dollars were used to estimate costs. No adjustment for inflation is applied.

4. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations.

5. Large and small incumbent local exchange companies will respond to identical numbers of applications per year. One large and one small incumbent local exchange company will respond to each application filed at the Commission. Only one exchange will be the subject of each application.

6. The cost per application to comply with Sections (11) and (12) for a large incumbent local exchange company will be $8,500. The cost per application to comply with Sections (11) and (12) for a small incumbent local exchange company is $5,000. These figures are based on estimates provided by several incumbent local exchange companies.

7. That due to changes in technology and the competitive environment, after five years the rule will become obsolete. This is based on comments received that numerous alternatives are available for expanded calling scopes and that because of changing technology and competition new alternatives will become available replacing traditional expanded calling scope plans.

8. That four applications per year will be filed for the first two years, that three applications will be filed in the third and fourth years, that one application will be filed in the fifth year and that no more applications will be filed under this rule. The Commission makes these assumptions based on the fact that the Commission has had five requests for expanded calling scopes filed in the past five years and that the companies estimate they will respond to approximately four requests per year for the first few years with the number decreasing after that.

9. That a majority of requests have already been filed with the Commission.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission (commission or PSC) under sections 386.250 and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-3.130 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2005 (30 MoReg 627–628). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held on May 18, 2005, following a public comment period which ended on May 9, 2005. At the hearing, Lisa Chase appeared on behalf of the Association of Missouri Electric Cooperatives (AMEC), Curtis Blanc appeared on behalf of Kansas City Power & Light (KCPL), and Dennis Frey and Warren Wood appeared on behalf of the staff of the Missouri Public Service Commission (staff). During the hearing, Mr. Wood, Manager of the staff's Energy Department, explained the current scope of rule 4 CSR 240-3.130, the nature and purpose of changes staff proposed to the 4 CSR 240-3.130 version published in the *Missouri Register*, the purpose of the collaborative meeting held with interested parties on April 18, 2005, and the changes agreed to among the parties in the collaborative meeting. Mr. Wood also explained that during the collaborative meeting, the staff did not agree with removing the requirements in the rule that rate information in proposed subsection (1)(E) and tax impacts in proposed subsection (1)(G) be provided to the commission, as it was staff's impression that the commission had requested this information in the past and should be provided with the opportunity to hear arguments regarding the need for this information.

COMMENT: In its written comments filed on May 6, 2005, staff filed its recommended changes to the version of 4 CSR 240-3.130 that was published in the *Missouri Register* that were agreed to by the parties in attendance at the April 18, 2005 collaborative meeting. Staff proposed that the final rule approved by the commission include the changes proposed in the version of the rule published in the *Missouri Register* on April 1, 2005, as additionally modified by the changes attached to staff's written comments as Appendix A in order to improve the clarity of the rule. Staff noted in its written comments that the only objections raised by parties at the collaborative meeting were in regard to new subsections (1)(E) and (1)(G), as provided in staff's Appendix A in its May 6, 2005 comments, which require the reporting of rate comparisons and tax impacts, respectively. AmerenUE and AMEC both participated in the April 18, 2005 collaborative meeting, and both support the proposed modifications in staff's written comments filed on May 6, 2005, with the exception of the additional provisions in subsections (1)(E) and (1)(G). KCPL also noted that it generally supports the proposed changes to 4 CSR 240-3.130 proposed by staff in its Appendix A, with the exception of staff's proposed language in subsection (1)(A) regarding the need for a legal description.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the staff's proposed additional changes to the version of 4 CSR 240-3.130 published in the *Missouri Register*, and with the exception of subsections (1)(A), (1)(E) and (1)(G), will adopt the additional changes proposed by staff as a result of its collaborative meeting with interested parties on April 18, 2005. Comments regarding subsections (1)(A), (1)(E) and (1)(G) are addressed by the commission in the Responses provided below. Subsections will be relettered as a result of these changes.

COMMENT: AmerenUE and AMEC, in their written comments, objected to proposed amended 4 CSR 240-3.130 subsection (1)(E). In AmerenUE's written comments it stated:

"The Commission should reject the proposed section 4 CSR 240-3.130(1)(E), as the information sought by this provision will not provide the Commission with any information regarding whether a proposed territorial agreement is not detrimental to the public interest. The information sought by 4 CSR 240-3.130(1)(E) can only influence the Commission when applicants seek a customer exchange, by seeking information which 91.025, 393.106, 394.135 specifically provides is not to be considered in determining whether or not to approve a proposed customer exchange."

In AMEC's written comments it stated:

"The Commission should reject the proposed section 4 CSR 240-3.130(1)(E), as the information sought by this provision will not provide the Commission with any information regarding whether a proposed territorial agreement is not detrimental to the public interest. The information sought by 4 CSR 240-3.130(1)(E) can only influence the Commission when applicants seek a customer exchange, by providing information which 91.025, 393.106, 394.135 specifically states is not to be considered in determining whether or not to approve a proposed customer exchange."

During the public hearing, staff noted that subsection (1)(E) in particular would specifically require that information be provided that the staff has been asked for in the past to provide to the press and to customers who have called the staff regarding particular proceedings.

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the required provision proposed in subsection (1)(E) of staff's Appendix A filed with their comments, and will not require that this information be provided in the filing requirements of 4 CSR 240-3.130. Staff and other parties can request this information through data requests if necessary, and this information is considered generally available with a minimum level of effort if needed. As noted by AmerenUE and AMEC, this information is not necessary for the commission to reach its decision whether the proposed agreement is not detrimental to the public interest.

COMMENT: AmerenUE and AMEC, in their written comments, objected to proposed amended 4 CSR 240-3.130 subsection (1)(G).

In AmerenUE's written comments it stated:

". . . applications for the approval of a proposed territorial agreement need not include a request from an IOU like AmerenUE to sell and or transfer facilities and equipment. If no request is made to transfer facilities and equipment at the time an application is filed seeking approval of proposed territorial agreement, then this provision is meaningless. If an IOU seeks to sell or transfer facilities and equipment to another utility, there are existing Commission rules which requires *[sic]* the IOU to state what tax impact will have because of the transfer."

In AMEC's written comments it stated:

". . . applications for the approval of a proposed territorial agreement need not include a request from an IOU to sell and or transfer facilities and equipment. If no request is made to transfer facilities and equipment at the time an application is filed for approval of a proposed territorial agreement, then this provision is not relevant. If an IOU seeks to sell or transfer facilities and equipment to another utility, there are existing Commission rules which require the IOU to state what the tax impact will be due to the transfer."

AMEC also stated in its written comments:

"Furthermore, AMEC believes that the Commission lacks the jurisdiction to require an electric cooperative to provide tax impact information, as an electric cooperative is not required to seek Commission approval to transfer facilities and equipment to another utility."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the provision proposed in subsection (1)(G) of staff's Appendix A filed with its comments, and will not require that this information be provided in the filing requirements of 4 CSR 240-3.130. Staff and other parties can request this information through data requests if necessary. The commission believes that proposed amendment to 4 CSR 240-3.130, as revised by staff's Appendix A, provides for sufficient initial discovery without this provision.

COMMENT: KCPL, in its written comments filed on May 9, 2005, and at the hearing on May 18, 2005, commented that "formal legal descriptions are unnecessary and onerous." In its written comments KCPL stated: "Historically, the MPSC has accepted maps outlining an applicant's service territory, plus a schedule of Townships, Ranges and Sections by county." KCPL further stated: "KCPL views the proposed requirement to provide legal descriptions as increasing the burden on applicants without providing any real benefits to the process of the public interest." In the public hearing, staff was questioned regarding the meaning of a "legal description." In response to these questions, staff noted that the term "legal description" was actually used in the rule prior to the changes being proposed in these proceedings. In the public hearing, staff further responded: "The point is we need something where we can draw a legally binding line on a map so the people know when they're coming in for a territorial agreement designation service area, we need to draw a line in the sand that says who has service responsibility on both sides of that line." During the public hearing, KCPL reiterated the concerns expressed in its written comments regarding the term "legal description" and stated: "we are aware and understand that Staff and the Commission needs the necessary information to draw reliable lines on the map. . . .'' KCPL further stated that it would be happy to submit draft alternative language regarding the term "legal description."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the use of the term "*legal description*" in this rule in light of past practice regarding what information has been sufficient for a determination of legal boundaries, and will adopt the following change to the language proposed in subsection (1)(A) of staff's Appendix A, as subsequently supplemented by KCPL (underlined portion):

"A copy of the proposed territorial agreement and a specific designation of the requested boundaries, including maps showing the requested boundaries and a schedule of the applicable Townships, Ranges and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the Commission or its staff, if necessary including the legal description of the area that is the subject of the application or petition;"

4 CSR 240-3.130 Filing Requirements and Schedule of Fees for Applications for Approval of Electric Service Territorial Agreements and Petitions for Designation of Electric Service Areas

(1) In addition to the requirements of 4 CSR 240-2.060(1), applications for commission approval of territorial agreements and petitions for designation of electric service areas shall include:

(A) A copy of the proposed territorial agreement and a specific designation of the requested boundaries, including maps showing the requested boundaries and a schedule of the applicable Townships, Ranges and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the commission or its staff, if necessary, including the legal description of the area that is the subject of the application or petition;

(B) A list of other electric utilities that serve in the affected area(s), if any;

(C) An illustrative tariff which reflects any changes in a regulated utility's operations or certification;

(D) An explanation as to why the territorial agreement is not detrimental to the public interest or the proposed electric service area designation(s) is in the public interest; and

(E) A list of all persons and structures whose utility service would be changed by the proposed agreement at the time of filing.

(2) If any of the information required by subsections (1)(A)–(E) of this rule is unavailable at the time the application is filed, the application must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished. All required information shall be furnished prior to the granting of the authority sought.

(3) The application or petition shall be accompanied by an initial filing fee in the amount of five hundred dollars ($500).

(4) An application for commission review of proposed amendment(s) to an existing territorial agreement between electric service providers shall not be subject to the fee of five hundred dollars ($500). However, the applicants shall be responsible for the payment of a fee which reflects necessary hearing time (including the minimum hearing time charge) and the transcript costs as specified in section (5) of this rule.

(5) In addition to the filing fee, the fee for commission review is set at six hundred eighty-five dollars ($685) per hour of hearing time, subject to a minimum charge for hearing time of six hundred eighty-five dollars ($685). There is an additional charge of three dollars and fifty cents ($3.50) per page of transcript. These fees are in addition to the fees authorized by section 386.300, RSMo.

(6) The parties shall be responsible for payment of any unpaid fees on and after the effective date of the commission's report and order relating to the electric territorial agreement or petition for designation of service areas. The executive director shall send an itemized billing statement to the applicants on or after the effective date of the commission's report and order. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case.

(7) On July 1 of each year, the filing fee and the fee per hour of evidentiary hearing time may be modified to match any percentage change in the Consumer Price Index for the twelve (12)-month period ending December 31 of the preceding year.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission (commission or PSC) under sections 386.250 and 393.140, RSMo 2000, the commission amends a rule as follows:

4 CSR 240-3.135 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2005 (30 MoReg 628–629). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held on May 18, 2005, following a public comment period which ended on May 9, 2005. At the hearing, Lisa Chase appeared on behalf of the Association of Missouri Electric Cooperatives (AMEC), Curtis Blanc appeared on behalf of Kansas City Power & Light (KCPL), and Dennis Frey and Warren Wood appeared on behalf of the staff of the Missouri Public Service Commission (staff). During the hearing, Mr. Wood, Manager of the staff's Energy Department, explained the current scope of rule 4 CSR 240-3.135, the nature and purpose of changes staff proposed to the 4 CSR 240-3.135 version published in the *Missouri Register*, the purpose of the collaborative meeting held with interested parties on April 18, 2005, and the changes agreed to among the parties in the collaborative meeting. Mr. Wood also explained that during the collaborative meeting, the staff did not agree with removing the requirements in the rule regarding the reporting of tax impacts in proposed subsection (3)(E). It is staff's impression that the commission has requested this information in the past and should be provided with the opportunity to hear arguments regarding the need for this information.

COMMENT: In its comments filed on May 6, 2005, staff filed its recommended changes to the version of 4 CSR 240-3.135 that was published in the *Missouri Register* that were agreed to by the parties in attendance at the collaborative meeting held on April 18, 2005. Staff proposed that the final rule approved by the commission include the changes proposed in the version of the rule published in the *Missouri Register* on April 1, 2005, as additionally modified by the changes attached to staff's written comments as Appendix A in order to improve the clarity of the rule. Staff noted in its written comments that the only objection raised by parties at the collaborative meeting was in regard to new subsection (3)(E), as provided in staff's Appendix A in its May 6, 2005 comments, which requires reporting of tax revenue impact. KCPL participated in the collaborative meeting held on April 18, 2005 and supported the proposed modifications subsequently set out in staff's May 6, 2005 written comments, with the exception of the provisions in sections (1) and (3) and subsections (1)(B), (1)(D) and (3)(C). AMEC also noted that it generally supports the proposed changes to 4 CSR 240-3.135 proposed by staff and subsequently included in its Appendix A, with exception to staff's proposed language in subsection (3)(E).

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the staff's proposed additional changes to the version of 4 CSR 240-3.135 published in the *Missouri Register,* and with exception of sections (1) and (3) and subsections (1)(B), (1)(D), (3)(C), and (3)(E), will adopt those additional changes proposed by staff as a result of its collaborative meeting with interested parties on April 18, 2005. Comments regarding sections (1) and (3) and subsections (1)(B), (1)(D), (3)(C), and (3)(E) are addressed by the commission in the responses provided below.

COMMENT: KCPL, in its written comments filed on May 9, 2005, requested clarification of the proposed amended 4 CSR 240-3.135 subsection (1). KCPL's written comments state: "As one reads the Post-Annexation Rule, it becomes apparent that the applications being discussed in Section (1) of the rule are those to be submitted by municipal electric utilities. Nonetheless, KCPL believes that the rule would be clearer if the rule stated this fact expressly in the first sentence of the Section, as the rule does with respect to Section (3), which applies to electric suppliers. KCPL therefore respectfully requests that the MPSC revise Section (1) of the Post-Annexation Rule to clarify expressly that the section applies to municipal electric utilities."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully reviewed subsection (1) of staff's Appendix A and finds that revising the text of section (1) to clarify that this section applies to municipally owned electric utility applications is appropriate and will make this change to the proposed amendment.

COMMENT: KCPL, in its written comments filed on May 9, 2005, and in the public hearing on May 18, 2005, commented that "formal legal descriptions are unnecessary and onerous." In its written comments KCPL stated: "Historically, the MPSC has accepted maps outlining an applicant's service territory, plus a schedule of Townships, Ranges, and Sections by county." KCPL further stated: "KCPL views the proposed requirement to provide legal descriptions as increasing the burden on applicants without providing any real benefits to the process of the public interest." In the public hearing, staff was questioned regarding the meaning of a "legal description." In response to these questions, staff noted that the term "legal description" was actually used in the rule prior to the changes being proposed in these proceedings. In the public hearing, staff further responded, "The point is, we need something where we can draw a legally binding line on a map so the people know when they're coming in for a territorial agreement designation service area, we need to draw a line in the sand that says who has service responsibility on both sides of that line." During the public hearing, KCPL reiterated the concerns expressed in its written comments regarding the term "legal description." KCPL stated: "We are aware and understand the Staff and the Commission needs the necessary information to draw reliable lines on the map...." KCPL further stated that it would be happy to submit draft alternative language regarding the term "legal description."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the use of the term "legal description" in this rule in light of past practice regarding what information has been sufficient for a determination of legal boundaries and will adopt the following change to the language proposed in subsection (1)(B) of staff's Appendix A, as subsequently supplemented by KCPL (underlined portion):

"A specific designation of the proposed exclusive electric service territory boundary including maps showing the boundary and a schedule of the applicable Townships, Ranges, and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the Commission or its staff, if necessary, including the legal description of the area."

COMMENT: KCPL, in its written comments filed on May 9, 2005, requested clarification of the proposed amended 4 CSR 240-3.135 subsections (1)(D) and (3)(C). KCPL's written comments state: "Section (3)(C) of the Post-Annexation Rule provides that an affected electric supplier must provide its 'estimate of the fair and reasonable compensation to be paid by the applicant for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation.'" KCPL is concerned that this language, as well as the corresponding provision contained in subsection (1)(D) of proposed amended 4 CSR 240-3.135 is unclear and potentially confusing. KCPL therefore requests that the MPSC revise subsection (3)(C) of the proposed amended rule to clarify the information that the MPSC intends to require. KCPL further requests that the MPSC make comparable changes to subsection (1)(D).

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully reviewed subsection (1)(D) and (3)(C) of staff's Appendix A and believes this concern has been addressed in staff's testimony at the hearing. At the May 18, 2005 hearing, staff stated that: ". . . this section reasonably points to the provisions of Revised Statutes of Missouri 386.800, Section 5, which authorizes the request for this information." The commission believes the language addresses statutory requirements, is consistent with these requirements, and should remain in these subsections in the form proposed by staff.

COMMENT: KCPL, in its written comments filed on May 9, 2005, and in the public hearing on May 18, 2005, commented on the

proposed amended 4 CSR 240-3.135 section (3). KCPL's written comments state: "Section (3) of the proposed Post-Annexation Rule provides that the electric suppliers must submit certain information to the MPSC within ten (10) days of receiving notice from the MPSC of a municipality's application for an exclusive service territory and a determination of compensation. KCPL is concerned that ten (10) days is not a sufficient amount of time for electric suppliers to provide the required information." KCPL additionally stated that it "respectfully requests that the MPSC grant electric suppliers twenty business days to provide the information required by Section (3) of the proposed Post-Annexation Rule."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully reviewed section (3) of staff's Appendix A and believes this is a valid concern that has been agreed upon by all parties based on testimony at the May 18, 2005 hearing. At the hearing, staff witness Wood indicated that staff had no objections to the revision, but noted a one hundred twenty (120)-day statutory limit regarding these provisions and that this additional time further reduces the time for other parties to do their work, as well as the time for the commission to formulate an Order. The commission believes that changing this language from ten (10) days to twenty (20) days will not greatly affect the timeline for processing cases under this rule; thus, the rule will be changed to incorporate the twenty (20)-day deadline.

COMMENT: AMEC, at the public hearing on May 18, 2005, objected to proposed amended 4 CSR 240-3.135 subsection (3)(E). At the hearing, AMEC representative Lisa Chase indicated that, notwithstanding its omission of the case number for 4 CSR 240-3.135 when it filed its comments, AMEC was equally concerned with subsection (3)(E), as it was with subsection 4 CSR 240-3.130(1)(G) in Case No. EX-2003-0371. Ms. Chase addressed AMEC's concerns over the statement of tax impact in this section by stating: "The Commission lacks jurisdiction to require rural electric cooperatives to provide tax impact information as an electric cooperative is not required to seek Commission approval to transfer facilities and equipment to another utility."

RESPONSE AND EXPLANATION OF CHANGE: The commission has carefully considered the provision proposed in subsection (3)(E) of staff's Appendix A and will not require that this information be provided in the filing requirements of 4 CSR 240-3.135. Staff and other parties can request this information through data requests if necessary. The commission believes that the commission's proposed amendment to 4 CSR 240-3.135, as revised by staff's Appendix A, provides for sufficient initial discovery without this provision. The subsections will be renumbered as a result of this change.

4 CSR 240-3.135 Filing Requirements and Schedule of Fees Applicable to Applications for Post-Annexation Assignment of Exclusive Service Territories and Determination of Compensation

PURPOSE: This rule establishes the requirements that must be met and a schedule of fees for applications to the commission for post-annexation assignment of exclusive service territories and determination of compensation. As noted in the rule, additional requirements pertaining to such applications are set forth in 4 CSR 240-2.060(1).

(1) In addition to the requirements of 4 CSR 240-2.060(1), municipally owned electric utility applications for post-annexation assignment of exclusive service territories and determination or compensation shall include:

(A) An explanation as to why the requested relief is in the public interest;

(B) A specific designation of the proposed exclusive electric service territory boundary including maps showing the boundary and a schedule of the applicable Townships, Ranges, and Sections, by county. If the requested boundary cannot reliably be ascertained from the information supplied by the applicant, such applicant shall provide additional information as requested by the commission or its staff, if necessary, including the legal description of the area;

(C) The electric rates that will be charged if the proposed change of supplier is allowed;

(D) The municipal electric utility's estimate of the fair and reasonable compensation to be paid to the affected electric supplier for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation;

(E) Any effect on the municipal electric utility's system operation, including, but not limited to, how the increased load will be served;

(F) Any power contracts that the municipality has agreed to with the affected electric supplier to serve the annexed area;

(G) Any issues on which the municipally owned electric utility and the affected electric supplier agree;

(H) A copy of the newspaper notification, as well as notifications sent to any affected supplier; and

(I) Affirmation of compliance with the deadlines for negotiation as outlined in section 386.800, RSMo.

(2) If any of the information required by subsections (1)(A)–(I) of this rule is unavailable at the time the application is filed, the application must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished. All required information shall be furnished prior to the granting of the authority sought.

(3) The commission shall notify the affected electric suppliers within ten (10) days of receipt of an application from a municipally owned electric utility and, that the affected electric suppliers are made parties to the proceeding and shall file with the commission within twenty (20) days of the notice the following information:

(A) A response to the applicant's requested relief;

(B) The current electric rates that are charged in the proposed exclusive electric service territory;

(C) The electric supplier's estimate of the fair and reasonable compensation to be paid by the applicant for the existing distribution system within the proposed exclusive electric service territory, for any proposed acquisitions or transfers, including the valuation formulas and factors used to calculate fair and reasonable compensation;

(D) Any effect on the electric supplier's system operation, including, but not limited to, loss of load and loss of revenue; and

(E) Affirmation of compliance with the deadlines for negotiation as outlined in section 386.800, RSMo.

(4) If any of the information required by subsections (3)(A)–(E) of this rule is unavailable within twenty (20) days of the notice, the responsive pleading must be accompanied by a statement of the reasons the information is currently unavailable and a date by which it will be furnished.

(5) The application shall be accompanied by an initial filing fee in the amount of five hundred dollars ($500).

(6) In addition to the filing fee, the fee for commission review of the application is set at six hundred eighty-five dollars ($685) per hour of hearing time, subject to a minimum charge for hearing time of six hundred eighty-five dollars ($685). There is an additional charge of three dollars and fifty cents ($3.50) per page of transcript. These fees are in addition to the fees authorized by section 386.300, RSMo.

(7) The parties shall be responsible for payment of any unpaid fees on and after the effective date of the commission's report and order relating to the application. The executive director shall send an itemized billing statement to the applicants on or after the effective date

of the commission's report and order. Responsibility for payment of the fees shall be that of the parties to the proceeding as ordered by the commission in each case.

(8) On July 1 of each year, the filing fee and the fee per hour of evidentiary hearing time may be modified to match any percentage change in the Consumer Price Index for the twelve (12)-month period ending December 31 of the preceding year.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 33—Service and Billing Practices for Telecommunications Companies

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.040, 386.250, 392.240, 392.451 and 392.470, RSMo 2000, and 392.200, RSMo Supp. 2004, the commission adopts a rule as follows:

4 CSR 240-33.045 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 15, 2005 (30 MoReg 513–515). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A hearing was held on May 11, 2005 in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Oral testimony and written comments were received during the comment period regarding proposed rule 4 CSR 240-33.045. Written comments were filed on behalf of the commission's staff; the Office of the Public Counsel ("OPC"); Sprint Missouri, Inc. and Sprint Communications Company, L.P. (collectively "Sprint"); the Missouri Telecommunications Industry Association ("MTIA"); MCI; Southwestern Bell Telephone Company, L.P. d/b/a SBC Missouri ("SBC"); and AT&T Communications of the Southwest, Inc., TCG Kansas City, Inc. and TCG St. Louis, Inc. (collectively "AT&T"). Oral testimony was received during the hearing on behalf of the commission's staff, OPC, SBC, Sprint, CenturyTel of Missouri, L.L.C. and Spectra Communications Group, L.L.C. The comments and testimony included support for the rule in whole and in part, and opposition to the rule in whole and in part. The comments and testimony in opposition to the rule, or suggesting modifications to the proposed rule, are responded to below.

COMMENT: SBC commented that it objects to proposed section 4 CSR 240-33.045(1) because it would be unreasonable for a company to keep a customer on the line to discuss all non-recurring monthly charges that may appear on a bill. SBC further commented that proposed section 4 CSR 240-33.045(1) could be interpreted to require disclosure of all possible plans and rates with the customer or to require disclosure of taxes or other non-regulated fees. The commission's staff proposed new language to 4 CSR 240-33.045(1) to address some of SBC's concerns.
RESPONSE AND EXPLANATION OF CHANGE: The purpose of the proposed section 4 CSR 240-33.045(1) is to provide clear, full and meaningful disclosure of all charges and rates applicable to the services a customer is ordering or is considering ordering. The commission finds that the proposed rule cannot reasonably be interpreted to require a company to disclose charges that do not apply to the service or services the customer is ordering or considering ordering. For items with a fixed rate, the company should be able to disclose an exact amount without difficulty. For rates that are variable, the company should be able to make the customer aware that there will be charges on the bill such as taxes and federal surcharges. However, the commission finds that the intent of the rule would be clarified by accepting some of the staff's proposed changes with modifications. Specifically, the commission finds that language should be added to clarify that only charges applicable to the services the customer has ordered or is considering ordering need to be disclosed prior to an agreement for service. The commission further finds that 4 CSR 240-33.045(1) should be modified to reflect that variable charges can be identified without specifying the specific dollar amount.

COMMENT: The commission's staff commented that the word "may" in 4 CSR 240-33.045(2) could be interpreted to allow telecommunications companies to misrepresent fees or charges as governmentally mandated or authorized. The staff suggested changing "may" to "shall."
RESPONSE AND EXPLANATION OF CHANGE: The commission finds the word "may" in 4 CSR 240-33.045(2) should be replaced with the word "shall" to reinforce the commission's intent to prohibit fees and charges that are misrepresented as being governmentally mandated or authorized.

COMMENT: SBC commented that it objects to the phrase "disguising it" from proposed section 4 CSR 240-33.045(2), and proposes replacing the word "disguising" with the word "misrepresenting." OPC commented that it opposed the change.
RESPONSE: The commission finds that preventing charges or fees that are disguised or otherwise misrepresented as governmentally mandated or authorized is in the public interest. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that 4 CSR 240-33.045(2) should be modified by adding "telecommunications" before "companies" at the beginning of the section.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that this change is appropriate.

COMMENT: OPC commented that it would like to ban single line-item surcharges that are not based on governmentally mandated charges, rather than allowing both mandated charges and discretionary charges specifically authorized by government.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that both mandated government charges and non-mandated but specifically authorized discretionary charges should be allowed. The commission will clarify this intention by inserting the word "specifically" before the word "authorized" throughout the rule. The commission will also clarify this intention by deleting the words "order, decision, ruling or mandate" from proposed section (3). For consistency, the commission will also use the term "charges" throughout the rule in place of the word "fees."

COMMENT: The commission's staff commented that a new section should be added to provide guidance on the placement of the Relay Missouri surcharge on a customer's bill, as provided by section 209.255, RSMo.
RESPONSE: The commission finds that the proposed new section is not consistent with the purposes of the proposed rulemaking and will not be added.

COMMENT: AT&T, MCI, MTIA and SBC commented that proposed section 4 CSR 240-33.045(4) is unlawful and should be deleted. Sprint commented that proposed section 4 CSR 240-33.045(4) is not needed to address upfront disclosures and billing practices, and should be eliminated.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the last sentence in proposed section (4) is unnecessary and will delete that sentence from the rule.

COMMENT: AT&T, MCI, MTIA and SBC objected to proposed section 4 CSR 240-33.045(5) and commented that this section purports to allow the commission to remove any charge that it finds does not comport with the rule without a hearing to determine whether the existing tariff is unlawful or unreasonable. The staff commented that the rule could be clarified to indicate that removal of an existing tariffed charge would occur only through the commission's formal complaint procedures.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that proposed section 4 CSR 240-33.045(5) does not purport to invalidate existing tariffs without an evidentiary hearing. The rule contemplates following the commission's complaint procedures and does not predetermine the procedures used by the commission to resolve a complaint. For clarity, the proposed language of 4 CSR 240-33.045(5) will be modified to state that challenges to the authority or legality of a tariffed charge shall be filed pursuant to 4 CSR 240-2.070.

COMMENT: AT&T commented that the last sentence of 4 CSR 240-33.045(5) is arbitrary and capricious. AT&T contends that if the commission approves a tariff for one company, then similar tariffs for another company should also be approved unless the commission can demonstrate why such a tariff is not lawful.
RESPONSE: The commission's supervision of the public utilities of Missouri is a continuous one and its orders and directives with regard to any phase of the operation of any utility are always subject to change to meet changing conditions, as the commission, in its discretion, may deem to be in the public interest. Current problems associated with misleading disclosures and misleading billing practices have presented new concerns that may not have existed when the commission approved an existing tariff charge. Existing tariffs cannot impede the commission's duty to ensure that every unjust or unreasonable charge made or demanded for any such service or in connection therewith, or in excess of that allowed by law or by order or decision of the commission, is prohibited and declared to be unlawful.

COMMENT: SBC commented that it objects to proposed section 33.045(6) because it is duplicative of the rule's title and purpose.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that section 4 CSR 240-33.045(6) is helpful in that it clarifies that the commission's rules establish the minimum requirements and that additional requirements could be implemented by commission order or by the Federal Communications Commissions (FCC). However, the commission finds that the rule is clarified by moving 4 CSR 240-33.045(6) to the end of the rule since all provisions of this rule are minimum requirements.

COMMENT: SBC commented that proposed rule 4 CSR 240-33.045 should be limited to residential customer bills. SBC also commented that proposed section 4 CSR 240-33.045(7) should be modified by adding the word "telecommunications" before "company" and by adding the word "residential" before "customer." OPC commented that small businesses and most business owners in general struggle with misleading billing and disclosure practices.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the rule should apply equally to protect both residential and business customers. The commission further finds that the proposed rule, as written and as ordered in this order of rulemaking, applies equally to residential and business customer bills. The commission finds that adding the word "residential" would alter the purpose of this section contrary to the commission's objectives. However, the commission agrees that the word "telecommunications" should appear before "company."

COMMENT: AT&T commented that the commission should not adopt this rule and should instead participate in the current FCC rulemaking on truth-in-billing practices. SBC commented that the commission should defer this proceeding until after the FCC resolves its truth-in-billing rules.
RESPONSE: The commission finds that adopting a Missouri specific rule, instead of relying on the FCC's rules, is necessary to ensure clear identification and disclosure of charges assessed on Missouri consumers. A Missouri specific rule will provide clarification to the telecommunications industry that misleading billing practices are prohibited under the laws of the state of Missouri. A Missouri specific rule will also help facilitate educated consumer choices and competition in telecommunications. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that not all line-items and surcharges are inherently unreasonable if they are not government mandated.
RESPONSE: The commission finds that the proposed rule prevents charges that are misrepresented as government mandated charges and that the proposed rule does not attempt to predetermine that all line items and surcharges are inherently unreasonable. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that it objects to the proposed rule and that the commission can litigate any concerns it has about a particular carrier's charges under existing laws.
RESPONSE: The commission finds that this proposed rule is a more efficient manner of preventing all telecommunications carriers from placing misleading charges on their bills than could be accomplished through timely and costly litigation on a case-by-case basis. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that it is confusing to place a rule addressing both residential and business customers between two rules that only address residential customer bills.
RESPONSE: The commission finds that the placement of the rule at 4 CSR 240-33.045 does not create confusion because Chapter 33 applies to both residential and business customers unless otherwise specified. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that the rule should clearly be limited to "regulated" services because the commission lacks the authority to require disclosure of non-regulated items.
RESPONSE: The commission finds that the proposed rule does not attempt to extend the commission's authority over unregulated services, but only attempts to prohibit misleading billing practices appearing on the telephone bills of companies providing intrastate telecommunications services in the state of Missouri. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC and AT&T commented that the proposed rule reaches beyond the commission's authority and jurisdiction. SBC further commented that the proposed rule should be limited to intrastate telecommunications services provided by telecommunications companies over which the commission has jurisdiction.
RESPONSE: The commission finds that the proposed rule does not reach beyond the commission's authority and jurisdiction. Section 386.250, RSMo 2000 and 47 U.S.C. section 152(b) give the commission the authority to adopt rules which prescribe the conditions on billing for intrastate telecommunications or in connection with intrastate telecommunications. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that there is not sufficient evidence to demonstrate that existing bills are insufficient to protect consumers.
RESPONSE: The OPC commented that consumers cannot understand their bills and that the public wants to have the ability to make an intelligent decision when comparing their existing service to the

service of other companies. The commission finds that the proposed rule offers protections for Missouri's consumers not provided for under the current rules and statutes. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that the right to bill a line item is a right protected by the First Amendment of the *United States Constitution*.
RESPONSE: The commission finds that the proposed rule will not violate the First Amendment because the proposed rule is necessary to serve a compelling state interest and is narrowly drawn to achieve that end. No changes were made to the proposed rule as a result of these comments.

COMMENT: SBC commented that the commission is preempted by the FCC because the FCC has stated that non-misleading line items are permissible.
RESPONSE: The commission finds that the rule is consistent with decisions of the FCC. No changes were made to the proposed rule as a result of these comments.

4 CSR 240-33.045 Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills

(1) All telecommunications companies shall provide a clear, full and meaningful disclosure of all monthly charges and usage sensitive rates that are applicable to the services the customer has ordered or is considering ordering. Such disclosure shall be provided prior to an agreement for service. This disclosure shall be in addition to the itemized account of monthly charges during the customer's first billing period for the equipment and service for which the customer has contracted, as required by 4 CSR 240-33.040(8). Allowed charges that may vary, depending on the location of the customer or the amount of the customer bill, can simply be identified without specifying the specific dollar amount that would be applied to the customer.

(2) Telecommunications companies shall not include on a customer's bill any charge misrepresented as governmentally mandated or specifically authorized by:
(A) Disguising it;
(B) Naming, labeling or placing it on the bill in a way that implies that it is governmentally mandated or specifically authorized; or
(C) Giving it a name or label that is confusingly similar to the name or label of a governmentally mandated or specifically authorized charge.

(3) Governmentally mandated or specifically authorized charges include, but are not limited to, separately identified charges to recover costs associated with any monthly charge mandated or specifically authorized by federal, state or local government. These monthly charges shall be identified on the customer's bill in easy to understand terms and in a manner consistent with their purpose or applicability.

(4) Companies imposing separately identified charges that appear to be governmentally mandated or specifically authorized charges shall provide, upon request by the commission staff, such federal, state or local government order, decision, ruling, mandate or other authority on which it relies in placing such a charge on the customer's bill.

(5) To challenge the authority or legality of a tariffed charge under this rule, a party shall file a complaint pursuant to 4 CSR 240-2.070. The commission may order removal or modification of any charge it finds does not comport with this rule. Nothing in this rule will preclude the commission from suspending or rejecting company tariffs when similar or identical tariffs have been approved for other companies.

(6) Any telecommunications company that serves as a billing agent for another entity shall not be held liable for any violation of this rule for that portion of the customer bill that relates to that other entity.

(7) This rule establishes minimum requirements for clarity in billing separately identified charges.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 50—Division of School Improvement
Chapter 340—School Improvement and Accreditation

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under section 161.092, RSMo Supp. 2004, the board rescinds a rule as follows:

5 CSR 50-340.110 Policies and Standards Relating to Academically Deficient Schools **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 2, 2005 (30 MoReg 797). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 70—Special Education
Chapter 742—Special Education

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under sections 161.092, RSMo Supp. 2004 and 162.685, RSMo 2000, the board hereby amends a rule as follows:

5 CSR 70-742.140 is amended.

A notice of proposed rulemaking was not published because state program plans required under federal education acts or regulations are specifically exempt under section 536.021, RSMo. Between April 28 and May 18, 2005, the Division of Special Education conducted five (5) public hearings regarding proposed changes to the Part B State Plan implementing the Individuals with Disabilities Education Act (IDEA). The hearings were conducted in Springfield, Columbia, St. Louis, Kansas City and Cape Girardeau.

This rule becomes effective thirty (30) days after publication in the *Code of State Regulations*. This rule describes Missouri's services for children with disabilities, in accordance with Part B of the Individuals with Disabilities Education Act (IDEA).

5 CSR 70-742.140 Individuals with Disabilities Education Act, Part B. This order of rulemaking amends the incorporated by reference material, *Regulations Implementing Part B of the Individuals with Disabilities Education Act*, to bring the program plan in compliance with federal statutes and section (2) of the rule.

(2) The content of this state plan for the Individuals with Disabilities Education Act (IDEA), Part B, which is hereby incorporated by reference and made a part of this rule, meets the federal statute and Missouri's compliance in the following areas. A copy of the IDEA, Part B (revised 2005) is published by and can be obtained from the

Department of Elementary and Secondary Education, Special Education Compliance Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 161.092, RSMo Supp. 2004 *and 162.685, RSMo 2000. Original rule filed April 11, 1975, effective April 21, 1975. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Aug. 5, 2005.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 23—Geological Survey and Resource Assessment Division
Chapter 3—Well Construction Code

ORDER OF RULEMAKING

By the authority vested in the department's Well Installation Board under section 256.606, RSMo Supp. 2004, the board amends a rule as follows:

10 CSR 23-3.060 Certification and Registration Reports **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005 (30 MoReg 975–976). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under sections 313.004 and 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-5.190 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005 (30 MoReg 977–979). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (MGC) received four (4) letters of comment on 11 CSR 45-5.190, Minimum Standards for Electronic Gaming Devices. Additionally, a public hearing was held at which individuals/groups were provided the opportunity to express their agreement with or concern about the proposed amendment as written. No one appeared at the hearing.

International Game Technology (IGT)

Ms. Sandra McKinley, Senior Regulatory Compliance Analyst for IGT, submitted the following written comments on behalf of IGT:

COMMENT: 11 CSR 45-5.190(2)(C) This subsection appears to require that gaming devices use a communication protocol that is compatible with and interfaces with a communication protocol. IGT respectfully requests clarification that the intent is for the gaming device and system to use a compatible protocol. In addition, the word "all" ("used by all on-line computerized . . .") could be interpreted to mean one protocol must be able to communicate with all systems, or that a gaming device must implement every protocol used by every system approved in Missouri. IGT respectfully requests clarification as to which protocols must be supported by a gaming device.

RESPONSE: The intent of the rule is that gaming devices use a communication protocol that is compatible with and interfaces seamlessly with the communication protocol being used by the computerized slot accounting system in use at the casino in which the gaming devices are being placed. Whether the gaming device's communication protocol is system specific or universal is the manufacturer's choice. The devices, however, must be tested for such conformity and interoperability prior to their being approved for use within the state.

COMMENT: 11 CSR 45-5.190(2)(G) This subsection requires the game recall to "reflect bonus rounds in their entirety." Gaming devices with retriggerable free spins can theoretically generate an infinite number of free spins. IGT respectfully requests the following language be added (borrowed from GLI-11):

"For games that may have infinite free games, there shall be a minimum of fifty (50) games recallable."

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comment and deems it to have merit. Therefore, the proposed amendment has been modified accordingly.

COMMENT: 11 CSR 45-5.190(2)(I) A gaming device must display the award for each specific win, including mystery awards. IGT respectfully requests clarification as to whether a gaming device must include knowledge of all potential mystery awards in its paytable, or if this requirement is met by a system display of the potential mystery award or in the direct vicinity of a gaming device.

RESPONSE: Each gaming device participating in a mystery award event must display clearly on its face notice to the player of such participation and the award amount must be displayed on or in the immediate vicinity of the participating gaming devices.

COMMENT: 11 CSR 45-5.190(3)(K) For jackpot wins that are not automatically paid out at the device, the attendant must prepare a payout ticket that includes among other informational items, "nonvolatile meter readings." IGT respectfully requests the commission include more detail on the meters required.

RESPONSE AND EXPLANATION OF CHANGE: "Nonvolatile meter readings" is an over-broad requirement needing more specificity than provided in the proposed amendment to the rule; furthermore, the rapid changes in electronic gaming device technology make the recording of meters more difficult for slot personnel responsible for hand paid jackpots. Therefore, even though recording the nonvolatile jackpots paid meter could be a useful audit tool, the commission deems it a cumbersome requirement and has removed it from the rule.

Harrah's

Mr. Fred Stuckel II, Director of Regulatory Compliance for Harrah's Missouri properties, submitted the following written comments:

COMMENT: 11 CSR 45-5.190(2)(F) We are assuming that the Game Monitoring Unit (GMU) is considered an external device. The EGD will not communicate to the GMU until all self-tests have been complete, but the GMU itself does continue to communicate with the slot data system (SDS) even when the EGD is powered down.

RESPONSE: The GMU's continued communication with the slot data system does not conflict with the requirement of the regulation.

COMMENT: 11 CSR 45-5.190(3)(K) We are requesting that Harrah's not be required to include the meter reading on the jackpot slips due to the fact that someone can take the meter readings and potentially figure the approximate hold of the EGD. In addition, the increased time that it takes to complete a jackpot would cause great guest dissatisfaction.
RESPONSE AND EXPLANATION OF CHANGE: The claim one would be able to determine casino hold because of a requirement to record meter readings is suspect. However, "Nonvolatile meter readings" is an over-broad requirement needing more specificity than provided in the proposed amendment to the rule; furthermore, the rapid changes in electronic gaming device technology make the recording of meters more difficult for slot personnel responsible for hand paid jackpots. Therefore, even though recording the nonvolatile jackpots paid meter could be a useful audit tool, the commission deems it a cumbersome requirement and has removed it from the rule.

Argosy

Mr. Ronald D. Arn, Compliance Manager for Argosy Riverside Casino submitted the following written comments:
COMMENT: 11 CSR 45-5.190(2)(E) Does this mean all machines placed in service after January 1, 2006 must meet this requirement? Or does it require all machines in service meet this requirement? I'm told all of our machines presently meet this requirement if an intermediate step is taken to reference the required information. Is this acceptable?
RESPONSE: The proposed amendment applies uniformly to all gaming devices in play at licensed riverboat casinos on January 1, 2006. The game manufacturer shall ensure the software used in their gaming devices meets this requirement without the necessity of intermediary steps.

COMMENT: 11 CSR 45-5.190(3)(G) Since gaming began in Missouri, all jackpots of one thousand two hundred dollars ($1,200) or more are required to have a W2G prepared. This rule seems to be working and not causing any problems with the employees involved in preparing the W2G's. We do not see any benefits from this requirement.
RESPONSE AND EXPLANATION OF CHANGE: Review of the proposed amendment and dialogue with the industry suggests a W2G indicator on the payout slip to be unnecessary, as the jackpot amount itself determines the requirement for completion of a W2G. The proposed amendment has, therefore, been changed accordingly.

COMMENT: 11 CSR 45-5.190(3)(I) Amount to patron. Is this the net amount to the patron after required Missouri Income Tax withholding of four percent (4%) of the jackpot? Since the federal tax rate can vary it's not possible to have the system automatically calculate the federal taxes and the net due the patron. This must be inputted into the system and is subject to human error. Currently, the tax and net amount due patron must be calculated by the cage when paying a taxable jackpot and preparing the W2G. This is complicated further with patrons taking the jackpot proceeds in cash, check, chips, tokens or a combination of each. Currently, we show the tax and amount of cash, check, chips and tokens on the jackpot form. The amount due the patron is the total of cash, check, chips and tokens. Does this meet this requirement?
RESPONSE: The amount due the patron is the jackpot total before taxes decreased by the taxes withheld. Indicating the amount of cash, check, chips and tokens satisfies the requirements of the rule.

COMMENT: 11 CSR 45-5.190(3)(K) Nonvolatile meter readings. This needs to specify what meter readings are required. We are not sure what benefit is gained by having meter readings recorded on the jackpot payout slip.
RESPONSE AND EXPLANATION OF CHANGE: "Nonvolatile meter readings" is an over-broad requirement needing more specificity than provided in the proposed amendment to the rule; furthermore, the rapid changes in electronic gaming device technology make the recording of meters more difficult for slot personnel responsible for hand paid jackpots. Therefore, even though recording the nonvolatile jackpots paid meter could be a useful audit tool, the commission deems it a cumbersome requirement and has removed it from the rule.

Shuffle Master, Incorporated (SMI)

Mr. Mark Roy, Technical Product Compliance Administrator for Shuffle Master, Incorporated submitted the following written comments:
COMMENT: 11 CSR 45-5.190(2)(C) SMI wants the phrase "for Interoperability" within the amendment to be stricken from this proposed amendment. SMI wants this phrase to be removed from the proposed amendment because it would cost the gaming device manufacturers thousands of dollars in testing fees, cause lengthy delays in product approvals and, in some cases, prevent the casinos from obtaining the latest and greatest technology vital to generating revenues to the state. The proposed amendment, if approved in its current form, will give the Missouri Gaming Commission the mandate to force all the manufacturers to have their gaming machine hardware and software tested with every slot accounting system, that are being used in the casinos that they oversee. It also empowers the MGC to make all of the manufacturers test modifications to previously approved software and hardware with all of the systems even if the changes made to the software and hardware are not related to its operability to the slot accounting system. This is all unnecessary because with increased competition for floor space and the ever-growing mandate from the casinos to have the manufacturers certify their machines for use on the slot accounting systems by the independent labs, the interoperability testing is already occurring. There is no need for this to be mandated by the MGC.
RESPONSE: If the interoperability testing is already occurring as stated in SMI's comment, there should be no objection to inclusion of the requirement in the rule. The fact is, however, actual testing for interoperability with each slot accounting system with which manufacturers tout their games and software to be compatible is not being performed. Independent testing laboratories presently only test communication protocols for compatibility, but the ability of these protocols to interface seamlessly and interact with the individual systems is tested on the casino floor. It should not be a casino's burden to ensure games and game firmware communicate effectively with their slot accounting systems. Such testing should occur prior to devices and their firmware being approved for use within the state. No change will be made to the amendment as proposed.

COMMENT: 11 CSR 45-5.190(2)(F)1. At the moment "External Device" is not currently defined in Chapter One of the Division 45 gaming regulations. This chapter needs to be amended to add the definition of the "External Device." The gaming machine manufacturers need to have a clear definition of what an "External Device" is so that they can ensure that their gaming machines comply with this amendment.
RESPONSE: "External Device" as well as many other terms used throughout the regulations are not defined in 11 CSR 45-1. Such terminology is generally accepted and understood in the gaming industry. In the instance stated, the exact terminology is used in GLI Standard #11—Standards for Gaming Devices in Casinos, the definition for which is understood by gaming device manufacturers. For purposes of this regulation as well as GLI-11, "External Device" is any device to which a gaming device is linked or communicates and which resides outside the gaming device itself or which is added to the gaming device after manufacture and approval.

COMMENT: 11 CSR 45-5.190(2)(K) SMI wants to have this clause phrased in a manner that does not require the manufacturers that already support these meters, which are labeled similarly but not

quite the same, to change their existing software and hardware being used on their floors. If this amendment is passed without some language stating that these required meters must be labeled with industry standard meter labels such as "Coin In," and "Coin Out," then the manufacturers will need to create specific software for use in the state. The increased cost of creating this software and interoperability testing will force the gaming machine manufacturers to pass on the costs to the casinos, which will delay or prevent the latest and greatest technology, vital to the state's gaming revenue stream, from being installed on the casino floor.

RESPONSE AND EXPLANATION OF CHANGE: Changing technology is exactly the reason for the proposed change to the rule. Many gaming devices no longer accept tokens or coins; therefore, a more generic term is being placed into the regulation. Even though Missouri's existing regulation uses the terms "token" and "credits," gaming device manufacturers were not precluded from using terms such as "coins" and "cash." The commission has, however, modified the subsection by adding the words "or their equivalent as approved by the commission."

COMMENT: 11 CSR 45-5.190(3) From looking at the amendment, it is unclear as to whether this jackpot ticket will be created by the gaming machine or the casino personnel. This amendment needs to be clarified. If the machine is required to create the ticket for the casino personnel to fill, the manufacturers will have to bear the extra cost of creating and testing the software to be in compliance with this amendment. This cost will be passed on to the casinos, which will delay the latest and greatest technology, vital to the state's gaming revenue stream, from being installed on the casino floor.

RESPONSE AND EXPLANATION OF CHANGE: While the language about which the comment was received was part of the original rule and changed within the proposed amendment, the commission has no difficulty in adding language to make it clear the jackpot payout ticket is generated either by the computerized slot monitoring system or manually by casino personnel.

11 CSR 45-5.190 Minimum Standards for Electronic Gaming Devices

(2) Electronic gaming devices shall—

(G) Have game data recall capable of providing all information required to fully reconstruct at least the last five (5) games, retrievable upon the operation of an external key-switch or other secure method not available to the player. The five (5) game recall shall reflect bonus rounds in their entirety. For games that may have infinite free games, there shall be a minimum of fifty (50) games recallable;

(K) Have a complete set of nonvolatile meters including amount-in, amount-out, amount dropped, total amount wagered, total amount won, number of games played and jackpots paid, or their equivalent as approved by the commission;

(3) When an electronic gaming device is unable to automatically provide payment of jackpots requiring the payment to be made by the riverboat, jackpot payout tickets must be prepared either by the computerized slot monitoring system or manually by casino personnel containing the following information:

(G) Total before taxes and taxes withheld, if applicable;

(H) Amount to patron;

(I) Total amount played and game outcome of award, if applicable;

(J) The signature of a holder of a Class A license or the licensee employee making the payment, as approved by the commission; and

(K) A signature of at least one (1) other riverboat gaming operation employee attesting to the accuracy of the form.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under sections 313.004 and 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-5.210 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005 (30 MoReg 980–981). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (MGC) received three (3) letters of comment on proposed amendment 11 CSR 45-5.210, Integrity of Electronic Gaming Devices. Additionally, a public hearing was held at which individuals/groups were provided the opportunity to express their agreement with or concern about the proposed amendment as written. No one appeared at the hearing.

International Game Technology (IGT)

Ms. Sandra McKinley, Senior Regulatory Compliance Analyst for IGT, submitted the following written comments on behalf of IGT:

COMMENT: 11 CSR 45-5.210(1)(H) Current token acceptor technology does not actually measure the speed of a token. There is a maximum dwell time for optic sensors, which may indicate a token moving too slowly. A number of other parameters are measured to insure a token is of proper composition and moving in the correct direction. IGT respectfully requests that the requirement to measure speed of a token be removed.

RESPONSE AND EXPLANATION OF CHANGE: To preclude the misunderstanding or misinterpretation of requirements, the commission will clarify the requirement relating to the speed of token travel in coin acceptors by amending the language of the subsection.

COMMENT: 11 CSR 45-5.210(1)(L) New server based gaming technology allows some operations to be handled through secure remote access. We request the commission clarify how this requirement impacts the use of this technology.

RESPONSE: Server based game download systems are addressed within a separate section of rules; therefore, this rule does not impact that application. Even so, this rule would apply to the player terminals themselves.

COMMENT: 11 CSR 45-5.210(1)(Y) This section requires there be at least one (1) tower light for a group of bar-top style gaming devices. Due to the nature of how these devices are installed and used, IGT respectfully requests that this requirement be removed.

RESPONSE AND EXPLANATION OF CHANGE: The commission understands the difficulties licensees might have in complying with the proposed amendment and deems modification of the proposed amendment to be justified.

COMMENT: 11 CSR 45-5.210(2) This section requires the commission be notified within twenty-four (24) hours of the supplier's notification of a malfunction or anomaly affecting the integrity or operation of devices or systems regardless of the gaming jurisdiction in which the incident occurs. We respectfully request the allowance for notification of the commission be extended to forty-eight (48) hours after the supplier's knowledge. This provides the supplier more time to adequately diagnose the problem and in turn provide a complete report to the commission.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comment and considers it well founded. The proposed amendment has been modified.

Harrah's

Mr. Fred Stuckel II, Director of Regulatory Compliance for Harrah's Missouri properties, submitted the following written comments:

COMMENT: 11 CSR 45-5.190(1)(H) The last sentence of the paragraph states, "Token acceptors shall be capable of determining the direction and speed of the token travel in the receiver and any improper direction or speed shall result in the electronic gaming device going into an error condition." We are requesting that the EGD optics be utilized to satisfy this function. We understand that some vendors do supply coin comparators that have optics in its function; however, the vast majority of the casino's EGDs do not have this feature. The cost associated with this change would require a significant outlay of funds and may not be feasible for all EGDs.

RESPONSE AND EXPLANATION OF CHANGE: To preclude the misunderstanding or misinterpretation of requirements, the commission will clarify the requirement relating to the speed of token travel in coin acceptors by amending the language of the subsection.

COMMENT: 11 CSR 45-5.210(1)(Y) states, ". . . .This requirement may be substituted for a single tower light for bar-top style devices, provided each such device also has an audible alarm." We are requesting this be removed. None of the bar-top devices currently in use have a tower light attached to them. In fact, we are unaware of a manufacturer of bar-top EGDs who have such a product.

RESPONSE AND EXPLANATION OF CHANGE: The commission understands the difficulties licensees might have in complying with the proposed amendment and deems modification of the proposed amendment to be justified.

Shuffle Master, Incorporated (SMI)

Mr. Mark Roy, Technical Product Compliance Administrator for Shuffle Master, Incorporated, submitted the following written comment:

COMMENT: The time frame of reporting the problems to MGC needs to be increased to seven (7) business days. There are many occasions where problems arise in the field and the initial information provided by the floor personnel can be incomplete. Because of this, it usually takes a couple of days to track down the proper information in order to analyze, and reproduce the issue so that it may be reported accurately. If a manufacturer was to report an issue to the MGC within the twenty-four (24)-hour period that turned out to be a non-issue due to not being able to properly analyze the issue, then everybody's time has been wasted. Twenty-four (24) hours is insufficient time to report an accurate detail of the issue and its resolution.

RESPONSE AND EXPLANATION OF CHANGE: The commission has considered the comment and regards the twenty-four (24)-hour reporting requirement to possibly be insufficient. Therefore, the proposed amendment has been amended to require that reporting occur within forty-eight (48) hours.

11 CSR 45-5.210 Integrity of Electronic Gaming Devices

(1) Electronic gaming devices shall—

(H) If designed to accept physical tokens, have at least one (1) electronic token acceptor. Token acceptors must be designed to accept designated tokens and reject others. The token acceptor on an electronic gaming device must be designed to prevent the use of cheating methods such as slugging, stringing, spooning, the insertion of foreign objects, and other manipulation. All token acceptors are subject to approval by the commission. Tokens accepted but which are inappropriate token-ins must be rejected to the coin tray, returned to the player by activation of the hopper or printer or credited toward the next play of the electronic gaming device. The electronic gaming device control program must be capable of handling rapidly fed tokens or simultaneously fed tokens so that occurrences of inappropriate token-ins are prevented. Gaming devices, shall have sensors capable of determining the direction and speed of token travel in the receiver and any improper direction or coin traveling at too slow of a speed shall result in the electronic gaming device going into an error condition;

(Y) Have a tower light or candle located conspicuously on top of the gaming device that automatically illuminates when a player has won an amount or is redeeming credits the device cannot automatically pay, an error condition has occurred, or a call attendant condition has been initiated by the player. This requirement may be substituted for an audible alarm for bar-top style devices.

(2) Any electronic gaming device manufacturer holding a supplier license under the provisions of 11 CSR 45-4 et seq. shall notify the commission of any malfunction or anomaly affecting the integrity or operation of devices or systems provided under the scope of such license regardless of the gaming jurisdiction in which the malfunction or anomaly occurred or was discovered. The notification shall occur within forty-eight (48) hours of the supplier licensee being apprised of the malfunction or anomaly and shall be in a format approved by the commission.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 9—Internal Control System

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-9.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005 (30 MoReg 981–982). Section (1) of the the rule text and those sections of the Missouri Gaming Commission Minimum Internal Control Standards, MICS 2005, also known as Appendix A, with changes are reprinted here. The complete amended Appendix A is also available online at www.mgc.dps.mo.gov. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (commission) received written comments from Harrah's Maryland Heights, LLC, The Missouri Gaming Company d/b/a Argosy Riverside Casino (Argosy), and the commission staff. A public hearing on this proposed amendment was held on June 9, 2005, and the public comment period ended June 1, 2005. At the public hearing no comments were received.

COMMENT: The commission staff commented that 11 CSR 45-9.030(1) does not include all information required by section 536.031.4, RSMo.

RESPONSE AND EXPLANATION OF CHANGE: The language in section (1) has been modified to comply with the statutory requirement.

COMMENT: The Appendix A to this rule contains the commission's Minimum Internal Control Standards (MICS). Argosy commented that in MICS Chapter A, Section 1.03, Internal Control Standards should be changed to Internal Control System to be consistent with other provisions. Section 1.09 should be amended to correct a typographical error in the numbering.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, Chapter A, Sections 1.03 and 1.09 have been modified.

COMMENT: The commission staff requested that licensees be required to submit variance requests pursuant to MICS Chapter A, Section 4.01(B) in a uniform format approved by the commission in order to standardize variance requests.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the language in MICS Chapter A, Section 4.01(B) has been modified to require variance requests be submitted in a form and manner approved by the commission.

COMMENT: Argosy stated that in MICS Chapter D relating to table games, Sections 6.01 and 7.01 should be the same, and Sections 7.10 and 9.10 should be the same. In addition, the requirements of Section 8.13 about the method for making corrections to manual table credits should be included in Section 6.06, which deals with manual table fills.
RESPONSE AND EXPLANATION OF CHANGE: Sections 6.01 and 7.01 already contain the same requirements. MICS Sections 7.10 and 9.10 concern automated fills and credits for table games, so both should contain a description of employees authorized to enter data from the pit into the casino computer system. As a result of this comment, Sections 7.10 and 9.10 have been amended so that both sections contain the same requirements. The requirements of Section 8.13 have been included in Section 6.06.

COMMENT: Harrah's Maryland Heights, LLC commented to MICS Chapter D, Section 8.05 that manual fill slips in the "Whiz Machine" cannot be voided because some copies of the slips are not accessible.
RESPONSE AND EXPLANATION OF CHANGE: MICS Chapter D, Section 8.05 has been changed to require that only accessible fill slips must be voided by writing "void" across the face of the slips and an explanation of why the void was necessary.

COMMENT: Harrah's Maryland Heights, LLC stated that in MICS Chapter D, Sections 7.03 and 9.02 only a Table Games Manager is mentioned, but it is a supervisor's duty to ensure that credits have been entered into the computer system.
RESPONSE AND EXPLANATION OF CHANGE: The intent of this section is to limit access to the computer system, and not allow floor supervisors to have such access. However, the language has been modified in MICS Chapter D, Sections 7.03 and 9.02 to allow pit clerks access to the system.

COMMENT: The commission staff commented that casinos have indicated the desire to utilize full-size baccarat tables in providing baccarat to their patrons. However, before such games can be allowed it is necessary to specify the number of supervisors used during game play at these tables for regulatory purposes.
RESPONSE AND EXPLANATION OF CHANGE: As a result of these comments, the language in MICS Chapter D, Section 13.01 has been modified to provide that at least one (1) table games supervisor shall be on duty at each full-sized baccarat table.

COMMENT: Argosy commented that in MICS Chapter E, Section 12.01, the requirement that wide area progressives operate only in Missouri is inconsistent with current commission policy.
RESPONSE AND EXPLANATION OF CHANGE: The language in MICS Chapter E, Section 12.01 is modified to allow wide area progressives to link to gaming establishments licensed or approved by the commission.

COMMENT: The commission staff commented that MICS Chapter E, Section 14.19 did not provide adequate procedures for ensuring the security of gaming assets when casino employees assist patrons in using a bill validator on an electronic gaming device.
RESPONSE AND EXPLANATION OF CHANGE: The language of MICS Chapter E, Section 14.19 has been changed to add additional security measures, including the use of a special card, notification of the surveillance department, and prohibiting a patron from inserting cash into the bill validator in those circumstances.

COMMENT: The commission staff recommended that the requirement of commission approval prior to issuance of promotional tickets and coupons in MICS Chapter E, Section 16.09 be deleted.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the language of MICS Chapter E, Section 16.09 has been modified.

COMMENT: The commission staff noted that MICS Chapter E, Section 16.24 contained unnecessary language.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the language of MICS Chapter E, Section 16.24 has been modified.

COMMENT: The commission staff commented that MICS Section S, Section 2.01 contained an incorrect citation to the Federal Information Protection Standard.
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the language of MICS Chapter S, Section 2.01 has been modified.

11 CSR 45-9.030 Minimum Internal Control Standards

(1) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in Appendix A, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. This rule does not incorporate any subsequent amendments or additions. The minimum internal control standards were published by the commission in 2005 and do not include any later amendments or additions.

Chapter A

1.03 In addition to written procedures, flowcharts (although not required) may be included in the Internal Control Systems. Flowcharts shall mirror the written procedures; however, if there is a difference noted, the written procedures shall be followed.

1.09 A detailed description of each position shown on the organizational charts shall include:

(A) duties and responsibilities;
(B) immediate supervisor;
(C) supervisory authority;
(D) signatory ability, including alternate procedures in cases where the required signatory is unable to perform his duty; and
(E) access to sensitive assets and areas.

4.01 Each proposed change to the Internal Controls shall be classified per category and each category shall be submitted under separate cover. The categories are Substantive and Administrative, Variance from MICS, Emergency, New Games, and Changes Required by the Commission, and are defined as follows:

(A) Substantive changes to the Internal Controls, which affect the method of complying with a MICS. Administrative changes to the Internal Controls are editorial, clarify procedures or change position descriptions or titles, but do not affect the MGC Adopted Rules and Regulations or MICS.

(B) Variance requests from the Code of State Regulations (CSR), Minimum Internal Control Standards, and Internal Control System shall be submitted in a form and manner approved by the Commission. The Class A Licensee shall include a detailed explanation as to why it is necessary for the variance and what compensating safeguards, restrictions, or requirements, if any, will be added to the Internal Controls. Variances will be classified as:

(1) Single incident variances are on the spot and typically an emergency or "Reasonable Necessity" situation. Single incident variances must:

(a) be based on a detailed written request from the licensee showing a specific need for the variance;
(b) include proposed conditions or restrictions if applicable;
(c) be approved in writing by authorized MGC personnel; and
(d) be forwarded to the Chief Deputy Director Enforcement.

(2) Short term variances permit/exclude an activity for no more than 10 calendar days. Short term variances must:
(a) be based on a detailed written request from the licensee showing a specific need for the variance;
(b) include proposed conditions, restrictions, or requirements if applicable; and
(c) be forwarded to the Chief Deputy Director Enforcement for approval.

(3) Long term variances permit/exclude an activity for **more** than 10 calendar days. Long term variances must:

(a) be based on a detailed written request from the licensee showing a specific need for the variance;
(b) include proposed conditions, restrictions, or requirements if applicable; and
(c) be forwarded to the Chief Deputy Director Enforcement for approval.

Any approved long-term variance referenced in the Internal Controls shall include the date of the variance request.

(C) Emergency changes to the Internal Controls are those that if not approved and implemented by a given date would negatively impact the internal controls or cause serious interruption to gaming activities. Emergency changes to the internal controls are expected to be rare.

(D) New Games represents Internal Control changes needed for the Class A Licensee to operate a Commission approved game, which were not previously included in the Class A Licensee's Internal Controls.

(E) Changes to the Class A Licensee's Internal Control Systems may be required by MGC pursuant to 11 CSR 45-9.060.

Chapter D

6.05 If a manual fill slip needs to be voided, the Cage Cashier will write "VOID" across the face of the original and all accessible copies of the fill slip and an explanation of why the void was necessary. Both the Cage Cashier and a Security Officer or another Level II employee independent of the transaction shall sign the original and first copy of the voided fill slip. The original and first copy of the voided fill slips will be submitted to Accounting for retention and accountability.

6.06 Corrections on manual table fills, shall be made by crossing out the error, entering the correct information, and then obtaining the initials and MGC number of at least two cage employees. Employees in Accounting who make corrections will initial and include their MGC number.

7.03 The Table Games Manager or the Pit Clerk will enter a request for fill into the computer including the following:
(A) the amount by denomination,

(B) total amount,
(C) game/table number and pit,
(D) dates and time, and
(E) required signatures.

9.02 The Table Games Manager or the Pit Clerk will enter a request for credit into the computer including the following:
(A) the amount by denomination,
(B) total amount,
(C) game/table number and pit,
(D) dates and time, and
(E) required signatures.

9.10 The ability to input data into the casino computer system from the pit will be restricted to Table Games Managers and pit clerks.

9.11 Employees in Accounting who make corrections will initial each correction and include their MGC number.

13.01 At least one Table Games Supervisor shall be on duty at each full-size baccarat table providing direct supervision. At least one Table Games Supervisor shall be on duty in the pit providing direct supervision of each four open gaming tables if any one of the tables being supervised is a craps table. At least one Table Games Supervisor shall be on duty in the pit providing direct supervision of each six open gaming tables provided none of those six in operation is a craps table.

Additionally, the Table Games Supervisors, and their oversight of their assigned table games and pit operations will be directly supervised according to the following chart.

Tables Open	**Table Games Managers**	**Casino Shift Manager acting as a part -time Table Games Manager**
1 craps table	0	1
1-6 **total** tables	0	1
2 or more craps or baccarat tables	1	Not Allowed
7–36 total tables	1	Not Allowed
Each additional 1 -36 tables	1 additional	Not Allowed

Other than a Casino Shift Manager acting as a Table Games Manager, Table Games Managers shall be physically present in the pit for at least ninety percent (90%) of their shift and be solely dedicated to supervising activities at open table games and activities within the pit(s). Absences of a longer duration will require a replacement Table Games Manager be on duty in the pit. If a licensee uses job titles other than "Table Games Supervisor" and /or "Table Games Manager," the internal controls will specify which job titles used by the licensee correspond to these positions and ensure the job descriptions of those positions properly delineate the duties. Table Games Managers supervising pit areas separated by sight or sound shall have a communications device enabling them to be immediately notified of any incident requiring their attention and shall promptly respond when notified. The Casino Shift Manager will assign Table Games Managers specific responsibilities regarding activities associated with specific tables.

Chapter E

12.01 Wide Area Progressive Systems shall link only gambling establishments licensed or approved by the Commission.

14.19 Tickets may be inserted in any EGD participating in the validation system providing that no credits are issued to the EGD prior to confirmation of ticket validity. The patron may also redeem a ticket at a cashier/change booth or other approved validation terminal. Tickets presented for redemption, whether by a cashier or through insertion into the bill validator of a participating EGD or other approved redemption device, shall immediately upon validation be moved from an unpaid status to a paid status. Class A licensees may, through submission of internal controls, permit supervisory personnel within the slot department to activate an EGDs bill validator for a patron whose player's card will not activate the bill validator due to an inadequate buy-in balance. Such activation shall be for the sole purpose of allowing the patron to insert a ticket and shall be accomplished through use of a specially designated bill validator activation card identifiable to the individual supervisor. The Supervisor will notify Surveillance of the pending transaction, and the transaction will not take place until Surveillance gives authorization for coverage. Patrons will not be permitted to put cash into the bill validator. Each specially designated bill validator activation card shall be audited at least weekly to ensure no buy-ins have been executed on that account. Any buy-in through the use of the activation card, the loss or theft of an activation card, or other incident related to an activation card that could result in improper buy-ins shall be immediately reported to the MGC agent on duty.

16.09 Each Ticket/Coupon shall, at a minimum, contain the following printed information:
(A) Casino Name/Site Identifier;
(B) Ticket/Coupon validation number;

(C) Value in alpha and numeric characters;
(D) Whether the Promotional Ticket/Coupon is redeemable for cash (cashable) or not (non-cashable);
(E) Indication of an expiration period from date of issue, or date and time the ticket/coupon will expire; and
(F) Bar code or any machine-readable code representing the validation number.

16.24 The Class A licensee shall, in their internal controls, specify the period of time for which Promotional Ticket/Coupon transactions will be maintained in the validation system, which period shall not be less than 90 days from the date of the transaction. Records removed from the system shall be stored and controlled in a manner approved by the MGC, consistent with the requirements of 11 CSR 45-8.

Chapter S

2.01 Wireless products used in conjunction with any gaming system must meet the following minimum standards:

(A) The system manufacturer must employ a security process that complies with Federal Information Protection Standard 1.40, *et seq*. (FIPS 140).

(B) The operating system used must be validated to provide adequate security, including domain separation and non-by-pass-ability in accordance with security requirements recommended by the National Institute of Standards and Technology.

(C) The system must utilize approved cryptographic algorithms for encryption/decryption, authentication, and signature generation/verification; approved key generation techniques and FIPS 140-1 validated cryptographic modules.

(D) All data packets must be encrypted before transmission, regardless of protocol used.

(E) The system must employ an Extensible Authentication Protocol (EAP) utilizing Transport Layer Security (TLS) that is Internet Engineering Task Force (IETF)–standardized and a Public Key Infrastructure (PKI) security certificate-based authentication process, whereby mutual authentication between the supplicant and the authentication server occurs before any wireless communication takes place.

(F) The system must utilize a dual homed intermediary server to isolate the wireless network from the wired network, each having its own firewall. Networks and components must be designed/configured with IP forwarding and broadcast mode disabled.

(G) The system must employ a stand-alone firewall for port blocking. The firewall must be configured in a manner that precludes any wireless product from gaining access to the network without first being scrutinized and passing the protocols.

(H) All aspects of a wireless network, including all hardware and software utilized therein, shall be subject to testing by the MGC or an independent testing laboratory designated by the MGC, and review and approval by the MGC prior to or following the implementation or change of the network by a Class A Licensee, or at any other time the MGC deems appropriate**,** the cost for which shall be borne by the Class A Licensee.

(I) The Class A Licensee shall provide MGC at least five days advanced written notice of any proposed changes or upgrades to an existing wireless network by an authorized representative of the Class A Licensee, which shall include, without limitation:
(1) a description of the reasons for the proposed modification;
(2) a list of the components and programs or versions to be modified or replaced;
(3) a description of any operating processes that will be affected;
(4) the method to be used to complete the proposed modification;
(5) the date the proposed modifications will be installed and the estimated time for completion;
(6) the name, title, and employer of the person(s) to perform the installation; and
(7) a diagrammatic representation of the proposed hardware design change.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.153, 208.159 and 208.201, RSMo 2000, the director hereby amends a rule as follows:

13 CSR 70-3.020 Title XIX Provider Enrollment **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1130). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 4—Conditions of Recipient Participation, Rights and Responsibilities

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.151, RSMo Supp. 2004 and 208.153 and 208.201, RSMo 2000, the director adopts a rule as follows:

13 CSR 70-4.100 Preventing Medicaid Payment of Expenses Used to Meet Spenddown **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1137–1138). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 5—Nonemergency Medical Transportation (NEMT) Services

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under section 208.201, RSMo 2000, the director hereby adopts a rule as follows:

13 CSR 70-5.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 15, 2005 (30 MoReg 1357). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Medical Services (DMS) received two (2) written comments regarding this proposed rule.

COMMENT: Two (2) comments suggested deleting the requirement that nursing facilities provide the nonemergency medical transportation needed by nursing facility residents. Requiring nursing facilities to provide NEMT with no addition to their reimbursement is in essence a rate decrease, according to the Missouri Association of Homes for the Aging. An Administrator of a rural sixty (60)-bed nursing facility expressed financial and staffing concerns in addition to a concern about the safety of nursing facility residents being transported by facility van or private vehicle.
RESPONSE AND EXPLANATION OF CHANGE: Section (2) will be deleted. The requirement that nursing facilities provide the nonemergency medical transportation needed by nursing facility residents will be deleted. The following sections of the rule will be renumbered.

13 CSR 70-5.010 Nonemergency Medical Transportation (NEMT) Services

(2) Nonemergency medical transportation is not available to a pharmacy.

(3) Medicaid reimburses the most appropriate and least costly transportation alternative suitable for the recipient's medical condition. If a recipient can use private vehicles or less costly public transportation, those alternatives must be used before recipients can use more expensive transportation alternatives.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 91—Personal Care Program

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.152, RSMo Supp. 2004 and 208.153 and 208.201, RSMo 2000, the director hereby amends a rule as follows:

13 CSR 70-91.010 Personal Care Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1139). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Board under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-10.050 Distribution of Accounts **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1139–1141). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 1—Food Protection

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under section 196.006, RSMo 2000, the director rescinds a rule as follows:

19 CSR 20-1.060 Licensing of Beverage Manufacturers and Distributors and the Collection of Inspection Fees **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1056). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 2—Protection of Drugs and Cosmetics

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under section 196.045, RSMo 2000, the director rescinds a rule as follows:

19 CSR 20-2.010 Inspection of the Manufacture and Sale of Drugs and Devices **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1056). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 2—Protection of Drugs and Cosmetics

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under sections 192.020, RSMo Supp. 2004 and 196.045, RSMo 2000, the director rescinds a rule as follows:

19 CSR 20-2.030 The Return and Resale of Drugs and Medicines **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1056). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 3—General Sanitation

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under sections 192.006, RSMo 2000 and 315.005–315.065, RSMo 2000 and Supp. 2004, the director rescinds a rule as follows:

19 CSR 20-3.050 Sanitation and Safety Standards for Lodging Establishments **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1141). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 3—General Sanitation

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Health and Senior Services under sections 192.006, RSMo 2000 and 315.005–315.065, RSMo 2000 and Supp. 2004, the department adopts a rule as follows:

19 CSR 20-3.050 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1141–1158). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Health and Senior Services received one (1) letter with sixteen (16) comments of support and opposition on the proposed rule.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that paragraphs (1)(A)8. and

(1)(A)25. appeared to be in conflict with one another due to the referenced "February 2002" date and requested we replace the "February 2002" language in paragraph (1)(A)25. with "any lodging establishment under construction upon the effective date of this rule."
RESPONSE AND EXPLANATION OF CHANGE: Paragraphs (1)(A)8. and 25. will be changed to clarify that a lodging establishment that has a current inspection conducted by or for the Missouri Department of Health and Senior Services (DHSS) and is in the process of obtaining a lodging license will be considered an existing, not a new lodging establishment. The February 2002 reference date has been deleted from paragraph (1)(A)25. and replaced with "after the effective date of this rule."

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that paragraph (1)(A)23. is not defined in a manner that confines the definition to what a lay person would believe is a "major renovation" and could be interpreted as replacement of new carpeting and/or wallpaper and requested adding the word "physical" and; further change after "demolition of" and before the word "the" the following "a substantial portion of either."
RESPONSE: Paragraph (1)(A)23. exempts the "replacement of broken, dated or worn equipment/items" which would include both worn carpet and/or dated wallpaper and therefore no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested that we change the wording in part (3)(C)2.I.(III) from "other methods approved by the administrative agency" to "other methods that can be demonstrated to the administrative authority that such method properly cleans and sanitized the reusable items."
RESPONSE: Even though a method can be demonstrated to properly clean and sanitize, it may not meet other standards for safety such as proper sanitizer concentrations. Therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested that we change the wording in subparagraph (3)(C)5.D. from "other methods approved by the administrative agency" to "other methods that can be demonstrated to the administrative authority that such method properly cleans and sanitized the reusable items."
RESPONSE: Even though a method can be demonstrated to properly clean and sanitize, it may not meet other standards for safety such as proper sanitizer concentrations. Therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested clarification of part (3)(C)2.G.(I). related to ice machines. As he read this section, he understood this portion of the rule to apply only to ice machines that are accessible to the guests and not intended for ice machines accessible by employees only.
RESPONSE: The department agrees with the interpretation of this portion of the rule and therefore no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested an exemption in paragraph (3)(C)4. for those lodging establishments with complimentary breakfasts that include prepackaged foods that need to be heated and are not in single service portions, such as oatmeal in warmers/crock pots.
RESPONSE: Paragraph (3)(C)4. is consistent with 19 CSR 20-1.025 Sanitation of Food Establishments; therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that part (3)(D)1.I.(IV) requires all carbon monoxide detectors to be hardwired. Although, the rule does not mandate carbon monoxide detectors in guest rooms that do not pose a potential carbon monoxide risk, the current wording would require those lodging establishments that decide to place detectors in all rooms to hardwire them. Mr. Schlemeir has proposed adding the word "required" after the word "all" in part (3)(D)1.I.(IV).
RESPONSE AND EXPLANATION OF CHANGE: Part (3)(D)1.I.(IV). has been changed to clarify that hardwiring will be required by September 2010 for carbon monoxide detectors the lodging establishment is required to have.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested an exemption in subparagraph (3)(E)1.G. for carpet molding/baseboards.
RESPONSE: Subparagraph (3)(E)1.G. does not apply to carpeting extended from the floor four inches (4") onto an adjacent wall. The department will clarify this in its operational guidelines. Therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that subparagraph (3)(E)1.L. does not allow any additional air passages except for utility and heating installations and requested allowing for any other air passages that are authorized by code and those currently used for properly installed ventilation purposes.
RESPONSE: Subparagraph (3)(E)1.L. allows for the proper installation of ventilation systems and other air passages as authorized by code; therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, stated that he believes that all doors that open to the outside do not need to meet the self-closing device requirement as outlined in subparagraph (3)(E)1.N., as the fire cannot spread outside even if the door is left open and has proposed to insert a "." after the word "outside" and delete the remainder of the sentence in this section.
RESPONSE: The requirement for self-closing devices on guest room doors that open directly to the outside but not at grade level are necessary to protect the means of egress for patrons on those floor(s); therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, stated that he does not believe a floor diagram as outlined in subparagraph (3)(E)1.R. is necessary for any room that opens to the outside and has proposed to insert a "." after the word "unit" and delete the remainder of the sentence in this section.
RESPONSE AND EXPLANATION OF CHANGE: Subparagraph (3)(E)1.R. will be changed to allow an evacuation route diagram rather than a floor diagram.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested clarification of subparagraph (3)(E)2.E. related to service openings. As he read this section, he understood this portion of the rule to mean that the room to which the chute leads must not only be for receiving the laundry or trash but instead the room to which the respective chutes lead can also be used for washing laundry and other associated activities.
RESPONSE: The department agrees with the interpretation of this portion of the rule and therefore no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that subparagraph (3)(E)2.N.

requires smoke detectors, heat sensing devices and carbon monoxide detectors to be hardwired by 2007. He stated, however, that many hotels have a rigorous inspection process of battery-operated smoke and carbon monoxide detectors and proposed the following language: "This section shall not take effect until a room with a battery-operated smoke alarm goes under major renovation but only if a weekly documented inspection of each battery-operated smoke alarm is conducted. If the hotel does not comply with the inspection procedure, then they would have to be hardwired by 2007."
RESPONSE AND EXPLANATION OF CHANGE: The "June 2007" date will be changed to "September 2010" in subparagraph (3)(E)2.N. and part (3)(D)1.I.(IV) to allow lodging establishment owners more time to comply with this requirement.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, requested that instead of specifically stating who shall design the pool in paragraph (3)(F)1., this paragraph should state the new pool shall comply with a national swimming pool code and the owner shall show proof that such plan complies.
RESPONSE: It would be more efficient to evaluate pool design as stated in the rule, than researching, evaluating and validating various swimming pool codes to determine their appropriateness. Therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, noted that subparagraph (3)(F)2.B. states that the latch has to be as high as possible, but no greater than four feet (4') while subparagraph (3)(F)2.C. states that the latch has to be as high as possible but no less than four feet (4').
RESPONSE: Subparagraph (3)(F)2.B. relates to outdoor pools and subparagraph (3)(F)2.C. relates to indoor pools. Therefore, no change has been made to the rule as a result of this comment.

COMMENT: Jorgen Schlemeier, Gamble & Schlemeier Governmental Consultants, proposes to add vacuum breakers as an additional authorized type of backflow prevention in subparagraph (3)(G)5.D.
RESPONSE: The Department of Natural Resources has determined that adding vacuum breakers as an additional authorized type of backflow prevention would be in conflict with their regulations. Therefore, no change has been made to the rule as a result of this comment.

19 CSR 20-3.050 Sanitation and Safety Standards for Lodging Establishments

(1) General.

(A) Definitions.

1. "Administrative authority" shall mean local or state health department representative or local codes administrator/fire marshal, state fire marshal or his/her representative.

2. "Air break" shall mean a piping arrangement in which a drain from a fixture, appliance or device discharges indirectly into another fixture, receptacle or interception at a point below the flood level rim. The connection does not provide an unobstructed vertical distance and is not solidly connected but precludes the possibility of backflow to a potable water source.

3. "Air gap" shall mean the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or outlet supplying fixture, or other device, and the flood-level rim of the receptacle. The vertical physical separation shall be at least two (2) times the inside diameter of the water inlet pipe above the flood rim level but shall not be less than one inch (1").

4. "Approved" shall mean acceptable to the administrative authority having jurisdiction.

5. "Bed and breakfast" shall mean an existing building(s) with no more than three (3) occupiable stories, with at least five (5) but no more than ten (10) guest rooms. The building shall have interior corridors and be provided with a kitchen; breakfast shall be provided to guests and the owner must live in or adjacent to the building.

6. "Dead-end corridor" shall mean a corridor, aisle or passageway arranged without an exit access in two (2) directions.

7. "Equivalent code" shall mean any code that is accepted by state regulatory authorities and the industry that contains the same definition or standard as the code referenced in this rule, including but not limited to, fire alarm systems, wireless smoke detectors and supervised sprinkler systems.

8. "Existing lodging establishment" shall mean a building, component or feature that is operating as a licensed lodging establishment or has a current inspection conducted by or for the Missouri Department of Health and Senior Services (DHSS) and is in the process of obtaining a lodging license as of the effective date of this rule.

9. "Exit" shall mean the portion of a means of egress that is separated from all other spaces of the building or structure by construction or equipment required to provide a protected way of travel to the exit discharge. Exits include exterior exit doors, exit passageways, horizontal exits, separated exit stairs and separated exit ramps.

10. "Exit access" shall mean the portion of a means of egress that leads to an exit.

11. "Exit discharge" shall mean the portion of a means of egress between the termination of an exit and a public way.

12. "Fire alarm system" is as described in the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition*, which is incorporated by reference in this rule or equivalent code. Any interested person may view this material at the agency's headquarters or may purchase a copy from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322. This rule does not incorporate any subsequent amendments or additions.

13. "Fire barrier" shall mean a structural element, either vertical or horizontal, such as a wall or floor assembly, that is designed and constructed with a specified fire resistance rating to limit the spread of fire and restrict the movement of smoke. Such barriers may have protected openings.

14. "Fire resistance rating" shall mean the length of time, in minutes or hours, that materials or structural elements can withstand fire exposure.

15. "Flame resistant material" shall mean the property of material or its structural elements that prevents or retards the passage of excessive heat, hot gases or flames under conditions in which they are used.

16. "Furnace" shall mean a heating device with forced air ductwork.

17. "Group of buildings" as referenced in the lodging establishment definition, shall mean any building, structure, facility, place, bed and breakfast, or places of business, including but not limited to, multiple, individual or multi-unit cabins and guest rooms that are not attached to the main building but receive the same services/amenities as those guest rooms within the main building.

18. "Guest room" shall mean any room or unit where sleeping accommodations are regularly furnished to the public.

19. "Hardwired" shall mean wired directly and permanently into the building's main electrical wiring system and/or a wireless system as described in the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition* or equivalent code.

20. "Hazardous areas" shall mean areas of structures or buildings posing a degree of hazard greater than normal to the general occupancy of a building or structure, such as areas used for the storage or use of combustibles or flammable, toxic, noxious or corrosive materials, or heat-producing appliances.

21. "Historic building" shall mean a building that is listed individually in the National Register of Historic Places or is located in a registered historic district and certified by the Secretary of the Interior as contributing to the historic significance of the district.

22. "Lodging establishment" shall include any building, group of buildings, structure, facility, place, or places of business where

five (5) or more guest rooms are provided, which is owned, maintained, or operated by any person and which is kept, used, maintained, advertised or held out to the public for hire which can be construed to be a hotel, motel, motor hotel, apartment hotel, tourist court, resort, cabins, tourist home, bunkhouse, dormitory, or other similar place by whatever name called, and includes all such accommodations operated for hire as lodging establishments for either transient guests, permanent guests, or for both transient and permanent guests. This definition shall not apply to dormitories and other living or sleeping facilities owned or maintained by public or private schools, colleges, universities, or churches unless made available to the general public and not used exclusively for students and faculty, school-sponsored events, baseball camps, conferences, dance camps, equitation camps, football camps, learned professional society meetings, music camps, retreats, seminars, soccer camps, swimming camps, track camps, youth leadership conferences, or church-sponsored events.

23. "Major renovation" shall mean a physical change to a lodging establishment or portion thereof, including the replacement or upgrading of major systems, which extends the useful life. Examples include, but are not limited to, demolition of the interior or exterior of a building or portion thereof, including the removal and subsequent replacement of electrical, plumbing, heating, ventilating and air conditioning systems, fixed equipment and interior walls and partitions (whether fixed or moveable). Replacement of broken, dated or worn equipment/items, including but not limited to, individual air conditioning units, bathroom tile, shower stalls that do not require any additional or new plumbing, electrical, etc. shall not be considered a major renovation.

24. "Means of egress" shall mean a continuous and unobstructed way of travel from any point in a building or structure to a public way. A means of egress consists of three (3) distinct parts, the exit access, the exit and the exit discharge.

25. "New lodging establishment" shall mean a building, component or feature that begins operation as a lodging establishment after the effective date of this rule or an existing lodging establishment that has ceased operation for a time period of eighteen (18) months or more and reopens as a lodging establishment after the effective date of this rule.

26. "Occupiable story" shall mean a story available to guests.

27. "Potable water" shall mean water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects and, for the purpose of this rule, must be approved by the Department of Natural Resources (DNR) or the DHSS prior to serving to the general public.

28. "Potentially hazardous food" shall mean those foods that are referenced in 19 CSR 20-1.025 Sanitation of Food Establishments.

29. "Prepackaged" shall mean bottled, canned, cartoned, securely bagged or securely wrapped, whether packaged in a food establishment or a food processing plant. It does not include a wrapper, carryout box or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

30. "Primary means of egress" shall consist of, but is not limited to, an enclosed interior stair, an exterior stair, horizontal exit, door, stairway, or ramp providing a means of unobstructed travel without traversing any corridor or space exposed to an unprotected vertical opening. The primary means of escape shall lead outside of the dwelling unit at street or ground level. Stairways serving as part of the primary means of egress shall be enclosed with fire barriers (vertical), such as wall or partition assemblies with a fire resistance rating of not less than thirty (30) minutes. Such enclosures shall be continuous from floor to floor. Openings shall be protected as appropriate for the fire resistance rating of the barrier.

31. "Private water supply" shall mean a piped water supply having less than fifteen (15) service connections or serving less than twenty-five (25) people at least sixty (60) days out of the year.

32. "Public water supply" shall mean a piped water supply having fifteen (15) or more service connections or serving twenty-five (25) or more people at least sixty (60) days out of the year. It may be a community water system, transient noncommunity water system or nontransient noncommunity water system.

33. "Public way" shall mean an area such as a street or sidewalk that is open to the outside and is used by the public for moving from one (1) location to another.

34. "Remote exit or means of egress" shall mean when two (2) exits or two (2) exit access doors are required.

35. "Secondary means of egress" shall consist of, but is not limited to, a door, outside window, stairway, passage, fire escape or hall providing a way of unobstructed travel to the outside of the dwelling at street or ground level; a passage through an adjacent nonlockable space to any approved means of escape; an outside window or door operable from the inside without the use of tools, keys, or special effort and providing a clear opening of not less than twenty inches (20") in width, twenty-four inches (24") in height, and 5.7 square feet in area. The bottom of the opening shall not be more than forty-four inches (44") above the floor. Such means of escape shall be acceptable if the window is within twenty feet (20') of grade or opens onto an exterior balcony and is directly accessible to fire department rescue apparatus as approved by the local fire inspector or State Fire Marshal's office.

36. "Self-closing" shall mean to be equipped with an approved device that will ensure closing after having been opened.

37. "Sleeping room" shall mean the part of the guest room where people sleep.

38. "Smoke proof enclosure" shall mean a stair enclosure designed to limit the movement of combustion products, produced by a fire occurring in any part of the building, into such enclosure.

39. "Spa" shall mean a pool designed for recreational and/or therapeutic use and not drained, cleaned and refilled for each individual. It may include, but is not limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction systems or any combination thereof.

40. "Story" shall mean the portion of a building located between the upper surface of a floor and the upper surface of the floor or roof next above.

41. "Supervised sprinkler system" is as described in the National Fire Protection Association 13, *Standard for the Installation of Sprinkler Systems 2002 Edition* and the National Fire Protection Association 13R, *Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height 2002 Edition*, which are incorporated by reference in this rule or equivalent code. Any interested person may view this material at the agency's headquarters or may purchase a copy from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322. This rule does not incorporate any subsequent amendments or additions.

42. "Wet location" shall mean a location subject to saturation with water or other liquids, including but not limited to, bathtubs, sinks and/or shower stalls.

(3) Requirements for Operating a Lodging Establishment.

(D) Life Safety. The lodging establishment shall be constructed, operated and maintained with strict regard to health and safety.

1. Operation and maintenance requirements are as follows:

A. Combustibles, whether solid, liquid or gaseous, shall be properly used and stored so that they do not present a hazard to health or life safety;

B. Toxic, corrosive, oxidizing or other hazardous materials shall be properly used, stored, and disposed of in such a manner that they do not present a hazard to health or life safety;

C. All guards placed on the sides of open face stairs shall be attached to the stair in a sturdy manner and maintained in good repair. All railings for balconies shall be attached to the balcony in a sturdy manner and maintained in good repair;

D. There shall be no storage on stairs or landings;

E. Stairways, walks, ramps and porches shall be kept free of ice and snow;

F. If the administrative authority suspects that defects are present with regard to the integrity of the structure or electrical system of the lodging establishment, that authority may require the owner to retain the services of a professional engineer to certify the lodging establishment for building safety;

G. Buildings must be adequately maintained to assure safe and sanitary conditions;

H. All repairs, additions and maintenance must be conducted in a manner that produces safe and sanitary conditions; and

I. Facilities using fuel-fired equipment or appliances that pose a potential carbon monoxide risk, including facilities with attached parking garages or wood burning fireplaces, shall install a carbon monoxide detector(s). Carbon monoxide detectors shall be installed according to manufacturer's specifications and should not be placed within five feet (5') of gas-fueled appliances or near cooking or bathing areas. Exception: carbon monoxide detectors installed prior to the effective date of this rule.

(I) Carbon monoxide detectors shall not be required to be installed in the attached parking garage area.

(II) Carbon monoxide detectors shall be required in rooms adjoining or sharing a common ventilation system with the attached parking garage.

(III) Carbon monoxide detectors shall be in good working condition. If the battery-operated detector is routinely not operational, the owner shall install a detector that is hardwired with battery backup.

(IV) By September 2010, all required carbon monoxide detectors shall be hardwired with battery backup. All additional carbon monoxide detector(s) shall be maintained and in good working condition.

(V) Carbon monoxide detectors shall be tested at least monthly or as needed to ensure they are operating properly and batteries shall be changed as needed.

2. Electrical. Installation and maintenance of electrical components shall be in compliance with local codes when applicable. In the absence of local codes, the following requirements shall be met:

A. New lodging establishments having electrical outlets installed within five feet (5') of wet locations or outdoors are required to be fitted with ground-fault circuit interrupters. Existing lodging establishments undergoing a major renovation or rewiring shall be required to install ground-fault circuit interrupters in electrical outlets located within five feet (5') of wet locations or outdoors;

B. Electrical switches, outlets and junction boxes must be covered and properly protected from physical damage at all times;

C. All appliances must be grounded to design specifications;

D. Wire splices shall be located in covered junction boxes at all times;

E. Bare or frayed wiring is prohibited;

F. Three (3)-prong receptacles must be properly grounded at all times. Nongrounded three (3)-prong receptacles in existing lodging establishments shall be replaced with two (2)-prong receptacles or properly grounded;

G. Public hallways, stairways, landings, and foyers shall be sufficiently illuminated at all times to prevent tripping or other injuries to persons;

H. Exit signs shall be provided when guest room doors open to an interior corridor and where guest room doors open to the outside but not directly at grade level;

I. Exit signs shall be maintained in a clean and legible condition and shall be illuminated at all times that the building is occupied. For new construction, supplemental directions signs, when necessary, shall be installed indicating the direction and way of egress;

J. All emergency lighting shall be maintained in good working condition.

(I) Emergency lighting shall be provided when guest room doors open to an interior corridor and where guest room doors open to the outside but not directly at grade level;

K. Temporary wiring and flexible cords shall not be used in place of fixed wiring.

(I) Use of extension cords longer than six feet (6') shall be prohibited unless provided with over-current protection or rated with properly sized wire. No more than two (2) extension cords per room may be used;

L. Wattage of light bulbs shall not exceed the wattage rating of corresponding light fixtures;

M. Empty light sockets are prohibited;

N. Circuit boxes shall be protected from physical damage and maintained in good condition. Storage of items that obstruct the vision of or access to circuit boxes is prohibited; and

O. Access to electrical panels shall be unobstructed; fuses and circuits must be labeled for identification.

(E) Fire Safety.

1. Operation and maintenance requirements for existing and new lodging establishments.

A. All facilities shall comply with all local building codes, fire codes and ordinances.

B. Housekeeping practices that ensure fire safety shall be maintained daily.

C. No fresh-cut Christmas trees shall be used unless they are treated with a flame resistant material. Documentation of the treatment shall be on file at the facility.

D. No door in any means of egress shall be locked against egress when the building is occupied.

(I) Delayed egress locks shall be permitted in buildings provided with a fire alarm system and/or an approved supervised automatic sprinkler system. No more than one (1) such device may be located in any one (1) egress path, and the door lock must unlock upon loss of power to the building, upon actuation of the fire alarm system, or upon actuation of the approved supervised automatic sprinkler system in the building.

E. Every bathroom door shall be designed to allow opening from the outside during an emergency when locked.

F. Doors serving a single dwelling unit shall be permitted to be provided with a lock, however, a key operation shall be allowed, providing that the key cannot be removed when the door is locked from the side from which egress is made.

G. Textile materials having a napped, tufted, looped, woven, nonwoven or similar surface shall not be applied to walls or ceilings unless they are treated with a flame resistant material. Documentation of the treatment shall be on file at the facility.

H. Foam plastic materials or other highly flammable or toxic material shall not be used as an interior wall, ceiling or floor finish unless approved by the administrative authority.

I. Hangings or draperies shall not be placed over exit doors or located to conceal or obscure any exit.

J. Mirrors shall not be placed on exit doors or adjacent to any exit that may confuse the direction of exit.

K. Portable fire extinguishers (5 pound, 2A-10BC) shall be required for the protection of all guests and located in the hallways, mechanical room(s), laundry area(s) and all other hazardous areas.

(I) The maximum travel distance to a fire extinguisher from a guest room door that opens into an interior corridor or a guest room door that opens to the outside but not directly at grade level shall be no greater than seventy-five feet (75') and accessible to the guest.

(II) All fire extinguishers shall be maintained in a fully charged and operable condition and inspected annually by a fire extinguisher company, fire department representative or other entity approved by the administrative authority.

(III) Fire extinguishers having a gross weight not exceeding forty (40) pounds shall be installed so that the top of the extinguisher is not more than five feet (5') above the floor. Extinguishers

having a gross weight more than forty (40) pounds shall be installed so that the top of the extinguisher is not more than three and one-half feet (3 1/2') above the floor. In no case shall the clearance between the bottom of the extinguisher and the floor be less then four inches (4").

L. There shall be no louvers or other air passages penetrating the wall except properly installed heating and utility installations.

M. Guest room doors shall be provided with room latches or other mechanisms suitable for keeping the doors closed.

N. Guest room doors shall be self-closing or provided with a closing device that closes the door automatically upon detection of smoke. Door-closing devices shall not be required in buildings protected throughout by an approved, automatic sprinkler system or when the guest room door opens directly to the outside of the dwelling unit at or to grade level.

O. Smoke detectors shall be installed in all sleeping rooms, cooking areas/kitchens, hallways, laundry rooms, mechanical rooms, hazardous areas and where specifically stated within this rule. Heat sensing devices may be installed in cooking areas in lieu of a smoke detector(s).

(I) Smoke detectors and heat sensing devices shall be maintained in good operating condition.

(II) If a wireless system is used, the system shall be designed, installed and maintained in accordance with the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition* or equivalent code.

(III) Smoke detectors shall be tested at least monthly or as needed to ensure they are operating properly and batteries shall be changed as needed.

(IV) All hardwired-interconnected smoke detectors shall be tested and approved annually by a sprinkler company, fire alarm company, fire department representative or other entity approved by the administrative authority.

(V) The administrative authority may require the installation of additional smoke detectors at any time.

P. All fire alarm systems and sprinkler systems shall be tested and approved annually by a fire alarm company, sprinkler company, fire department representative or other entity approved by the administrative authority.

Q. Individual fire sprinklers plumbed into a potable water line over gas water heaters and/or furnaces shall not be required to be tested and approved annually unless required by local ordinance.

R. An evacuation route diagram reflecting the actual floor or exterior doors that lead outside of the dwelling unit at street or ground level arrangement, exit locations, and room identification shall be posted in a location and manner acceptable to the administrative authority in every guest room or immediately adjacent to every guest room door. Guest room doors leading directly to the outside of the dwelling unit at grade level are not required to post an evacuation route diagram.

S. A copy of an emergency evacuation plan and employee instruction guide shall be kept on file that is accessible by all staff. All staff shall be able to demonstrate knowledge of the emergency evacuation plan.

T. Fire safety information shall be available so that guests may make an informed decision as to evacuate to the outside, evacuate to an area of refuge, remain in place, or employ any combination of the three (3) options.

2. Existing lodging establishments shall also meet the following requirements:

A. All facilities that use stairs as a component in the means of egress shall comply with the following:

(I) All open face stairs shall have guards placed on the sides. Guards shall be placed so that a four inch (4") diameter sphere cannot pass through them;

(II) Handrails for stairs shall not be less than thirty-four inches (34") and not more than thirty-eight inches (38") above the surface of the tread, measured vertically to the top of the rail from the leading edge of the tread;

(III) Railings for balconies shall not be less than forty-two inches (42") in height. Guards shall be placed so that a four inch (4") diameter sphere shall not pass through them; and

(IV) Existing handrails, railings and guards for stairs may continue to be used subject to approval of the administrative authority;

B. All facilities that use ramps as a component in the means of egress shall comply with the following:

(I) Ramps shall have a minimum width of forty-four inches (44") in all facilities;

(II) Ramps shall have a slip resistant surface;

(III) Ramps that are greater than six inches (6") in height shall have handrails and guards placed on each side. The handrails and guards shall comply with the stair requirements in (3)(E)2.A.(I)–(IV); and

(IV) Existing ramps may continue to be used subject to approval of the administrative authority;

C. Floors that separate stories in a building shall be maintained as a smoke barrier to provide a basic degree of compartmentation;

D. Openings through floors, such as hoistways for elevators, shaftways used for light, ventilation or building services; or expansion joints and seismic joints used to allow structural movements shall be enclosed with fire barriers (vertical), such as wall or partition assemblies whose fire resistance rating is not less than thirty (30) minutes. Such enclosures shall be continuous from floor to floor. Openings shall be protected as appropriate for the fire resistance rating of the barrier;

E. Service openings such as laundry chutes, dumbwaiters and inclined and vertical conveyors shall be provided with closing devices and must be kept closed when not in active use. Outlet doors for trash or laundry chutes shall open only to a separate room designed exclusively for that purpose. This room shall be provided with a one (1)-hour fire rated door that is self-closing. Existing installations may continue to be used upon approval of the administrative authority.

(I) Service openings provided with closing devices shall be self-closing, with a positive-latching frame and door assembly of one (1)-hour fire rating.

(II) Vertical conveyors and chutes shall be separately enclosed by walls or partitions. Service openings shall not open to an exit. Existing installations may continue to be used upon approval of the administrative authority;

F. All guest rooms shall have a means of egress to the outside of the building at or to grade level;

G. Egress routes that have been approved prior to February 2002 shall not be altered without prior approval by the administrative authority;

H. Dead-end corridors or hallways shall not exceed fifty feet (50');

I. No door or path of travel in a means of escape shall be less than twenty-eight inches (28") wide. Bathroom doors shall not be less than twenty-four inches (24") wide;

J. All guest rooms opening into an interior corridor(s) shall be separated by walls and twenty (20)-minute fire protection-rated doors, forty-four millimeters (44 mm) (one and three-fourths inch (1 3/4")) solid-bonded wood-core doors, steel-clad (tin-clad) wood doors, solid-core steel doors with positive latch and closer, or as approved by the administrative authority;

K. Existing transoms shall be permitted but must be permanently fixed in the closed position;

L. Smoke detectors and heat sensing devices should be installed on the ceiling, preferably in the center, but no less than four inches (4") from the wall of the sleeping area or on a sleeping room

wall between four and twelve inches (4"–12") from the ceiling or as otherwise approved by the administrative authority;

M. If a battery-operated detector is routinely not operational, the owner shall install a detector that is hardwired with a battery backup;

N. By September 2010, all smoke detectors and heat sensing devices shall be hardwired with battery backup; and

O. Existing fire alarm systems and sprinkler systems shall be maintained in good working order.

3. New lodging establishments shall meet these additional requirements. In addition to the required certification that the establishment has been designed and erected in accordance with the 2002 Edition of a national code(s), the DHSS has outlined minimum requirements for the maintenance of fire safety components and the installation of smoke detectors, fire alarm systems, sprinkler systems, and fire extinguishment to provide adequate life safety protection to ensure the safety of the occupants.

A. Lodging establishments meeting the definition of a bed and breakfast may have two (2) secondary means of egress that are independent and remote from one another in lieu of a primary means of egress.

B. Smoke detectors and/or heat sensing devices shall be installed on the ceiling, preferably in the center, but no less than four inches (4") from the wall of the sleeping area or on a sleeping room wall between four and twelve inches (4"–12") from the ceiling.

(I) All smoke detectors and/or heat sensing devices shall be hardwired with battery backup.

C. A fire alarm system shall be installed and maintained in accordance with the National Fire Protection Association 72, *National Fire Alarm Code 2002 Edition* or equivalent code and maintained in good working order. Exception 1: Single story buildings with guest room doors that open directly to the outside at grade level. Exception 2: Buildings with no more than three (3) occupiable stories and with no more than four (4) guest rooms per building with guest room doors that lead directly outside at or to grade level.

(I) When a fire alarm system is required, all smoke detectors and/or heat sensing devices shall be interconnected, except those located in sleeping rooms.

D. All buildings shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with the National Fire Protection Association 13, *Standard for the Installation of Sprinkler Systems 2002 Edition* or the *National Fire Protection Association 13R Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height 2002 Edition* or equivalent code.

(I) Bed and breakfasts and buildings with no more than three (3) occupiable stories, where all guest rooms have a door that opens directly to the outside at or to grade level or to an exterior exit access are not required to be protected throughout by an approved, supervised automatic sprinkler system.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Environmental Health and Communicable Disease Prevention
Chapter 20—Communicable Diseases

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under sections 192.006, RSMo 2000 and 192.020, RSMo Supp. 2004, the director amends a rule as follows:

19 CSR 20-20.080 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 16, 2005 (30 MoReg 1056–1067). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Health and Senior Services received one (1) letter of comment on the proposed amendment.

COMMENT: Quest Diagnostics Incorporated commented on the reporting of patient ethnicity and whether the rule should be phrased ". . . .and/or ethnicity."
RESPONSE: The department declines this proposed change, as ethnicity is a descriptor that complements the race classification and is not a stand-alone demographic. No changes have been made to the rule as a result of this comment.

COMMENT: Quest Diagnostics Incorporated commented that clarification was needed on how the reporting of the time frame in section (2) can be considered as plural.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this recommendation. Section (2) has been changed to eliminate the plural wherever the word "time frame(s)" was used.

COMMENT: Quest Diagnostics Incorporated commented that clarification was needed regarding what the addition of the wording "if applicable" relates to.
RESPONSE: The department maintains that "if applicable" as written relates to the term time frames. No changes have been made to the rule as a result of this comment.

COMMENT: Quest Diagnostics Incorporated commented that the transportation of Campylobacteriosis isolates would be difficult, as the fragile viability of this organism will not permit specific typing by the Public Health Laboratory.
RESPONSE: The department acknowledges that the isolates are fragile. However, according to the State Public Health Laboratory, they are rarely nonviable. No changes have been made to the rule as a result of this comment.

COMMENT: Quest Diagnostics Incorporated commented that it is not possible for an independent clinical laboratory to provide influenza-associated pediatric mortality specimens, as they have no knowledge of the clinical outcome or the actual diagnosis of the patient.
RESPONSE: The department acknowledges this is true. If the laboratory does not have knowledge of influenza-associated pediatric mortality, they cannot report it. No changes have been made to the rule as a result of this comment.

19 CSR 20-20.080 Duties of Laboratories

(2) In reporting findings for diseases or conditions listed in 19 CSR 20-20.020, laboratories shall report—

Arsenic—results of all biological specimens including time frame of urine specimen collection, if applicable;

Cadmium—results of all biological specimens including time frame of urine specimen collection, if applicable;

Carboxyhemoglobin proportion—all results;

Chemical/pesticide (blood or serum)—all results, including if none detected;

Lead level—results of all biological specimens;

Mercury—results of all biological specimens including time frame of urine specimen collection, if applicable; and

Methemoglobin proportion—all results.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs and other items required to be published in the *Missouri Register* by law.

[Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT]
Title 7—DEPARTMENT OF TRANSPORTATION
Division 265—*[Division of]* Motor Carrier and Railroad Safety
Chapter 10—Motor Carrier Operations

IN ADDITION

Due to the abolishment of the Division of Motor Carrier and Railroad Safety within the Department of Economic Development, and the transfer of its powers, duties, functions, rules and orders generally to the Missouri Highways and Transportation Commission, the following rules shall be transferred. See section 226.008, RSMo Supp. 2004. The transfer was effective July 11, 2002.

[4 CSR 265-10.010] **7 CSR 265-10.010** Definitions

[4 CSR 265-10.020] **7 CSR 265-10.020** Licensing of Vehicles

[4 CSR 265-10.025] **7 CSR 265-10.025** Marking of Vehicles

[4 CSR 265-10.030] **7 CSR 265-10.030** Insurance

[4 CSR 265-10.040] **7 CSR 265-10.040** Motor Vehicle Leasing

[4 CSR 265-10.045] **7 CSR 265-10.045** Passenger Service Requirement

[4 CSR 265-10.050] **7 CSR 265-10.050** Tariffs, Time Schedules and Motor Carrier Documentation

[4 CSR 265-10.060] **7 CSR 265-10.060** Inspection of Books, Records, Property, Equipment, and Roadside Stops by Division Personnel

[4 CSR 265-10.070] **7 CSR 265-10.070** Classification of Common Carriers by Services Performed

[4 CSR 265-10.080] **7 CSR 265-10.080** Rules Governing the Transportation of Household Goods

[4 CSR 265-10.100] **7 CSR 265-10.100** Regulation of Advertising by Motor Carriers

[4 CSR 265-10.110] **7 CSR 265-10.110** Joint Service, Interlining and Tacking by Passenger or Household Goods Carrier

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

EXPEDITED APPLICATION REVIEW SCHEDULE

The Missouri Health Facilities Review Committee has initiated review of the applications listed below. A decision is tentatively scheduled for September 21, 2005. These applications are available for public inspection at the address shown below:

Date Filed
Project Number: Project Name
City (County)
Cost, Description

08/08/05
#3815 NS: Crescent Care, LLC
St. Louis (St. Louis County)
$18,140,000, Replace 264-bed skilled nursing facility

08/09/05
#3814 NS: Gasconade Manor Nursing Home
Owensville (Gasconade County)
$1,916,665, Renovate/modernize long-term care facility

08/10/05
#3817 NS: Independence Regional Senior Care, LLC
Lee's Summit (Jackson County)
$6,772,000, Replace 70-bed skilled nursing facility

Any person wishing to request a public hearing for the purpose of commenting on these applications must submit a written request to this effect, which must be received by September 10, 2005. All written requests and comments should be sent to:

Chairman
Missouri Health Facilities Review Committee
c/o Certificate of Need Program
915 G Leslie Boulevard
Jefferson City, MO 65101

For additional information contact
Donna Schuessler, (573) 751-6403.

The Secretary of State is required by sections 347.141 and 359.481, RSMo 2000 to publish dissolutions of limited liability companies and limited partnerships. The content requirements for the one-time publishing of these notices are prescribed by statute. This listing is published pursuant to these statutes. We request that documents submitted for publication in this section be submitted in camera ready 8 1/2" x 11" manuscript.

NOTICE OF WINDING UP OF LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST INTOUCH MEDIA GROUP, LLC

On July 29, 2005, INTOUCH MEDIA GROUP, LLC, a Missouri limited liability company ("Company"), filed its Notice of Winding Up with the Missouri Secretary of State, effective on the filing date.

All persons and organizations must submit to Company, c/o Frank C. Carnahan, Carnahan, Evans, Cantwell & Brown, P.C., 2805 S. Ingram Mill, Springfield, Missouri 65804, a written summary of any claims against Company, including: 1) claimant's name, address and telephone number; 2) amount of claim; 3) date(s) claim accrued (or will accrue); 4) brief description of the nature of the debt or the basis for the claim; and 5) if the claim is secured, and if so, the collateral used as security.

Because of the dissolution, any claims against Company will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the last of filing or publication of this Notice.

Notice of Corporate Dissolution To All Creditors of and Claimants Against Strange & Coleman, Inc.

Strange & Coleman, Inc., a Missouri corporation, filed its Articles of Dissolution with the Missouri Secretary of State on April 18, 2003. All claims against the corporation should be sent to Deborah Molitz, Account Executive, c/o St. Paul Travelers, 1301 West Long Lake Road, Suite 300, Troy, MI 48098. Each claim should include the following: name, address and telephone number of the claimant; amount of the claim; the date the claim accrued; and the basis of the claim.

All claims not otherwise barred against the corporation shall be barred unless a proceeding to enforce the claim is commenced within two years after the date of this publication.

NOTICE OF DISSOLUTION OF CHAUCIN SUPPLY, LLC

On the 25th day of July, 2005, Chaucin Supply, LLC filed its Notice of Winding Up with the Missouri Secretary of State. The dissolution of the LLC was effective on the 25th day of July, 2005.

You are hereby notified that if you believe you have a claim against Chaucin Supply, LLC, you must submit a summary in writing of the circumstances surrounding your claim to the limited liability company to the attention of Carl J. Lumley, Curtis, Heinz, Garrett & O'Keefe, P.C., 130 S. Bemiston, Suite 200, St. Louis, Missouri 63105, no later than November 2, 2005

The summary of your claim must include the following information:

1. The name, address and telephone number of the claimant;
2. The amount of the claim.
3. The date on which the event on which the claim is based occurred.
4. A brief description of the nature of the debt or the basis for the claim.

All claims against Chaucin Supply, LLC will be barred unless the proceeding to enforce the claim is commenced within three (3) years after the publication of this notice. Claims will be barred as provided in Section 347.141 R.S.Mo.

**NOTICE OF DISSOLUTION OF
ST. LOUIS CUSTOM BUILDING, LLC**

On the 25th day of July, 2005, St. Louis Custom Building, LLC filed its Notice of Winding Up with the Missouri Secretary of State. The dissolution of the LLC was effective on the 25th day of July, 2005.

You are hereby notified that if you believe you have a claim against St. Louis Custom Building, LLC, you must submit a summary in writing of the circumstances surrounding your claim to the limited liability company to the attention of Carl J. Lumley, Curtis, Heinz, Garrett & O'Keefe, P.C., 130 S. Bemiston, Suite 200, St. Louis, Missouri 63105, no later than November 2, 2005.

The summary of your claim must include the following information:

1. The name, address and telephone number of the claimant;
2. The amount of the claim.
3. The date on which the event on which the claim is based occurred.
4. A brief description of the nature of the debt or the basis for the claim.

All claims against St. Louis Custom Building, LLC will be barred unless the proceeding to enforce the claim is commenced within three (3) years after the publication of this notice. Claims will also be barred as provided in Section 347.141 R.S.Mo.

LEGAL NOTICE

NOTICE OF WINDING UP TO ALL CREDITORS OF AND CLAIMANTS AGAINST DRS. CHRISTIANSEN & KING, LLC

On July 28, 2005, Drs. Christiansen & King, LLC, a Missouri Limited Liability Company (Company) filed its Notice of Winding Up with the Missouri Secretary of State. Any claims against the Company may be sent to P.O. Box 364, St. Joseph, Missouri 64502, attention Nicholas Robb. Each claim must include the following information:

The name, address and phone number of the claimant;
The amount of the claim;
The date on which the claim arose;
The basis for the claim; and
All documentation in support of the claim.

All claims against the Company will be barred unless the proceedings to enforce the claim are commenced within three (3) years after publication of this notice.

NOTICE OF WINDING UP OF LIMITED PARTNERSHIP TO ALL CREDITORS AND CLAIMANTS AGAINST WESTWINDS PARK ASSOCIATES, L.P.

Westwinds Park Associates, L.P., a Missouri limited partnership, ("Partnership") filed its certificate of cancellation with the Missouri Secretary of State on August 2nd, 2005.

All persons with claims against the Partnership should submit them in writing in accordance with this Notice of Winding Up to:

Westwinds Park Associates, L.P.
Attn: Legal
17 W. Lockwood Ave.
St. Louis, MO 63119

Claims must include: 1) claimant's name, address and phone number; 2) amount claimed; 3) date claim arose; 4) basis of claim, and 5) documentation supporting claim.

A claim against the Partnership will be barred unless a proceeding to enforce the claim is commenced within three years after publication of this notice.

Notice of Corporate Dissolution
To All Creditors of and
Claimants Against
Custom Insulation Contractors, Inc.

On July 25, 2005, CUSTOM INSULATION CONTRACTORS, INC., a Missouri corporation, filed its Articles of Dissolution with the Missouri Secretary of State. Dissolution was effective on July 25, 2005.

Said corporation requests that all persons and organizations who have claims against it present them immediately by letter to the corporation at:

Custom Insulation Contractors, Inc.
Attn: Susan Kintz
2525 Adie Road
Maryland Heights, MO 63043

Or

Kara Horton, Esq
Sandberg, Phoenix & von Gontard P.C.
One City Centre, 15th Floor
St. Louis, MO 63101

All claims must include the name and address of the claimant; the amount claimed; the basis for the claim; and the date(s) on which the event(s) on which the claim is based occurred.

NOTICE: Because of the dissolution of CUSTOM INSULATION CONTRACTORS, INC., any claims against it will be barred unless a proceeding to enforce the claim is commenced within two years after the publication date of the two notices authorized by statute, whichever is published last.

This cumulative table gives you the latest status of rules. It contains citations of rulemakings adopted or proposed after deadline for the monthly Update Service to the *Code of State Regulations*, citations are to volume and page number in the *Missouri Register*, except for material in this issue. The first number in the table cite refers to the volume number or the publication year—27 (2002), 28 (2003), 29 (2004) and 30 (2005). MoReg refers to *Missouri Register* and the numbers refer to a specific *Register* page, R indicates a rescission, W indicates a withdrawal, S indicates a statement of actual cost, T indicates an order terminating a rule, N.A. indicates not applicable, RUC indicates a rule under consideration, and F indicates future effective date.

Rule Number	Agency	Emergency	Proposed	Order	In Addition
	OFFICE OF ADMINISTRATION				
1 CSR 10	State Officials' Salary Compensation Schedule				27 MoReg 189 27 MoReg 1724 28 MoReg 1861 29 MoReg 1610
1 CSR 10-4.010	Commissioner of Administration	30 MoReg 1783	30 MoReg 1697		
1 CSR 10-8.010	Commissioner of Administration		30 MoReg 1614		
1 CSR 10-15.010	Commissioner of Administration	30 MoReg 1783	30 MoReg 1698		
1 CSR 15-3.290	Administrative Hearing Commission		30 MoReg 1437		
1 CSR 15-3.350	Administrative Hearing Commission		30 MoReg 1437		
1 CSR 15-3.380	Administrative Hearing Commission		30 MoReg 1438		
1 CSR 15-3.490	Administrative Hearing Commission		30 MoReg 1438		
1 CSR 20-4.020	Personnel Advisory Board and Division of Personnel		30 MoReg 1044		
1 CSR 40-1.060	Purchasing and Materials Management		30 MoReg 1527		
1 CSR 70-1.010	Missouri Assistive Technology Advisory Council *(Changed from 8 CSR 70-1.010)*		30 MoReg 1441		
1 CSR 70-1.020	Missouri Assistive Technology Advisory Council *(Changed from 8 CSR 70-1.020)*		30 MoReg 1441		
	DEPARTMENT OF AGRICULTURE				
2 CSR 30-2.005	Animal Health		This Issue		
2 CSR 30-2.010	Animal Health		30 MoReg 1529		
2 CSR 30-2.040	Animal Health		30 MoReg 685	30 MoReg 1814	
2 CSR 70-11.040	Plant Industries	30 MoReg 1433	30 MoReg 1438		
2 CSR 80-5.010	State Milk Board		30 MoReg 1044	30 MoReg 1816	
	DEPARTMENT OF CONSERVATION				
3 CSR 10-1.010	Conservation Commission		30 MoReg 1708		
3 CSR 10-4.117	Conservation Commission		30 MoReg 1112	30 MoReg 1747	
3 CSR 10-5.205	Conservation Commission		30 MoReg 1532		
3 CSR 10-5.420	Conservation Commission		30 MoReg 1533		
3 CSR 10-6.415	Conservation Commission		30 MoReg 1112	30 MoReg 1747	
3 CSR 10-6.535	Conservation Commission		30 MoReg 1113	30 MoReg 1747	
3 CSR 10-7.410	Conservation Commission		30 MoReg 1113 30 MoReg 1533	30 MoReg 1747	
3 CSR 10-7.440	Conservation Commission		N.A.	30 MoReg 1748	
3 CSR 10-9.110	Conservation Commission		30 MoReg 1114	30 MoReg 1748	
3 CSR 10-9.645	Conservation Commission		30 MoReg 1114	30 MoReg 1748	
3 CSR 10-10.744	Conservation Commission		30 MoReg 1115	30 MoReg 1748	
3 CSR 10-11.115	Conservation Commission		30 MoReg 1115	30 MoReg 1748	
3 CSR 10-12.109	Conservation Commission		30 MoReg 1115	30 MoReg 1749	
3 CSR 10-12.110	Conservation Commission		30 MoReg 1116	30 MoReg 1749	
3 CSR 10-12.115	Conservation Commission		30 MoReg 1116	30 MoReg 1749	
3 CSR 10-12.125	Conservation Commission		30 MoReg 1116	30 MoReg 1749	
3 CSR 10-12.140	Conservation Commission		30 MoReg 1117	30 MoReg 1749	
3 CSR 10-12.145	Conservation Commission		30 MoReg 1118	30 MoReg 1749	
3 CSR 10-12.150	Conservation Commission		30 MoReg 1119	30 MoReg 1750	
3 CSR 10-20.805	Conservation Commission		30 MoReg 1119	30 MoReg 1750	
	DEPARTMENT OF ECONOMIC DEVELOPMENT				
4 CSR 30-5.030	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects		30 MoReg 1301R 30 MoReg 1301		
4 CSR 30-5.080	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects		30 MoReg 1305		
4 CSR 30-8.020	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects		30 MoReg 1310		
4 CSR 30-10.010	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects		30 MoReg 1310R 30 MoReg 1310		
4 CSR 30-21.010	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects		30 MoReg 1314		

Rule Number	Agency	Emergency	Proposed	Order	In Addition
4 CSR 40-3.011	Office of Athletics		30 MoReg 1314R 30 MoReg 1314		
4 CSR 40-4.090	Office of Athletics		30 MoReg 1317R 30 MoReg 1317		
4 CSR 40-5.030	Office of Athletics		30 MoReg 1321		
4 CSR 60-1.025	State Board of Barber Examiners		30 MoReg 763	30 MoReg 1750	
4 CSR 60-2.015	State Board of Barber Examiners		30 MoReg 763	30 MoReg 1750	
4 CSR 60-2.040	State Board of Barber Examiners		30 MoReg 764	30 MoReg 1750	
4 CSR 60-3.015	State Board of Barber Examiners		30 MoReg 768	30 MoReg 1751	
4 CSR 70-2.032	State Board of Chiropractic Examiners		30 MoReg 769	30 MoReg 1816	
4 CSR 70-2.040	State Board of Chiropractic Examiners		30 MoReg 772	30 MoReg 1817	
4 CSR 70-2.060	State Board of Chiropractic Examiners		30 MoReg 775	30 MoReg 1817	
4 CSR 70-2.070	State Board of Chiropractic Examiners		30 MoReg 775	30 MoReg 1817	
4 CSR 70-2.080	State Board of Chiropractic Examiners		30 MoReg 775	30 MoReg 1817	
4 CSR 70-2.090	State Board of Chiropractic Examiners		30 MoReg 782 30 MoReg 1792	30 MoReg 1818	
4 CSR 70-3.010	State Board of Chiropractic Examiners		30 MoReg 782	30 MoReg 1818	
4 CSR 95-1.020	Committee for Professional Counselors		30 MoReg 1614		
4 CSR 100	Division of Credit Unions				30 MoReg 1759 30 MoReg 1852
4 CSR 110-2.230	Missouri Dental Board		30 MoReg 1048R	30 MoReg 1818R	
4 CSR 110-2.260	Missouri Dental Board		30 MoReg 1048	30 MoReg 1818	
4 CSR 145-1.040	Missouri Board of Geologist Registration		30 MoReg 783	30 MoReg 1751	
4 CSR 145-2.060	Missouri Board of Geologist Registration		30 MoReg 784R 30 MoReg 784	30 MoReg 1751R 30 MoReg 1751	
4 CSR 150-2.050	State Board of Registration for the Healing Arts		30 MoReg 788	30 MoReg 1751	
4 CSR 150-2.080	State Board of Registration for the Healing Arts		30 MoReg 788	30 MoReg 1751	
4 CSR 150-2.125	State Board of Registration for the Healing Arts		30 MoReg 790	30 MoReg 1752	
4 CSR 150-3.010	State Board of Registration for the Healing Arts		30 MoReg 791	30 MoReg 1752	
4 CSR 150-4.055	State Board of Registration for the Healing Arts		30 MoReg 791	30 MoReg 1752	
4 CSR 150-7.135	State Board of Registration for the Healing Arts		30 MoReg 1440		
4 CSR 195-3.010	Division of Workforce Development		30 MoReg 1322R 30 MoReg 1323		
4 CSR 195-3.020	Division of Workforce Development		30 MoReg 1328		
4 CSR 200-4.020	State Board of Nursing		30 MoReg 1795		
4 CSR 220-1.010	State Board of Pharmacy		30 MoReg 42 30 MoReg 1119	This Issue	
4 CSR 220-2.010	State Board of Pharmacy		30 MoReg 42 30 MoReg 1120	This Issue	
4 CSR 220-2.020	State Board of Pharmacy		30 MoReg 43 30 MoReg 1120	This Issue	
4 CSR 220-2.050	State Board of Pharmacy		30 MoReg 48 30 MoReg 1123	This Issue	
4 CSR 220-2.100	State Board of Pharmacy		30 MoReg 1534		
4 CSR 220-4.010	State Board of Pharmacy		30 MoReg 1538		
4 CSR 220-5.020	State Board of Pharmacy		30 MoReg 1538		
4 CSR 220-5.030	State Board of Pharmacy		30 MoReg 48 30 MoReg 1123	This Issue	
4 CSR 232-1.040	Missouri State Committee of Interpreters		30 MoReg 791	30 MoReg 1752	
4 CSR 232-2.030	Missouri State Committee of Interpreters		30 MoReg 792	30 MoReg 1752	
4 CSR 232-3.010	Missouri State Committee of Interpreters		30 MoReg 793	30 MoReg 1752	
4 CSR 232-3.030	Missouri State Committee of Interpreters		30 MoReg 793	30 MoReg 1753	
4 CSR 240-2.061	Public Service Commission		30 MoReg 687	This Issue	
4 CSR 240-2.071	Public Service Commission		30 MoReg 1332		
4 CSR 240-3.130	Public Service Commission		30 MoReg 627	This Issue	
4 CSR 240-3.135	Public Service Commission		30 MoReg 628	This Issue	
4 CSR 240-31.010	Public Service Commission	30 MoReg 1435	30 MoReg 1617		
4 CSR 240-31.030	Public Service Commission		30 MoReg 1617		
4 CSR 240-31.050	Public Service Commission	30 MoReg 1435	30 MoReg 1618		
4 CSR 240-31.060	Public Service Commission		30 MoReg 1619		
4 CSR 240-31.080	Public Service Commission		30 MoReg 1619		
4 CSR 240-33.045	Public Service Commission		30 MoReg 513	This Issue	
4 CSR 255-1.040	Missouri Board for Respiratory Care		30 MoReg 1798		
4 CSR 263-2.031	State Committee for Social Workers		30 MoReg 1708		
4 CSR 263-2.045	State Committee for Social Workers		30 MoReg 796	30 MoReg 1753	
4 CSR 263-2.047	State Committee for Social Workers		30 MoReg 796	30 MoReg 1753	
4 CSR 265-10.010	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.010)*				This Issue
4 CSR 265-10.020	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.020)*	This Issue	This Issue		This Issue
4 CSR 265-10.025	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.025)*				This Issue

Rule Number	Agency	Emergency	Proposed	Order	In Addition
4 CSR 265-10.030	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.030)*				This Issue
4 CSR 265-10.040	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.040)*				This Issue
4 CSR 265-10.045	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.045)*				This Issue
4 CSR 265-10.050	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.050)*				This Issue
4 CSR 265-10.060	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.060)*				This Issue
4 CSR 265-10.070	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.070)*				This Issue
4 CSR 265-10.080	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.080)*				This Issue
4 CSR 265-10.100	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.100)*				This Issue
4 CSR 265-10.110	Division of Motor Carrier and Railroad Safety *(Changed to 7 CSR 265-10.110)*				This Issue
	DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION				
5 CSR 50-340.110	Division of School Improvement			30 MoReg 797R	This IssueR
5 CSR 50-340.200	Division of School Improvement			30 MoReg 1620R	
5 CSR 50-345.300	Division of School Improvement			30 MoReg 1620	
5 CSR 70-742.140	Special Education			N.A.	This Issue
5 CSR 70-742.141	Special Education				30 MoReg 1759
5 CSR 80-800.200	Teacher Quality and Urban Education			30 MoReg 1621	
5 CSR 80-800.220	Teacher Quality and Urban Education			30 MoReg 1623	
5 CSR 80-800.230	Teacher Quality and Urban Education			30 MoReg 1625	
5 CSR 80-800.260	Teacher Quality and Urban Education			30 MoReg 1630	
5 CSR 80-800.270	Teacher Quality and Urban Education			30 MoReg 1632	
5 CSR 80-800.280	Teacher Quality and Urban Education			30 MoReg 1634	
5 CSR 80-800.290	Teacher Quality and Urban Education			30 MoReg 1636	
5 CSR 80-800.350	Teacher Quality and Urban Education			30 MoReg 1638	
5 CSR 80-800.360	Teacher Quality and Urban Education			30 MoReg 1640	
5 CSR 80-800.380	Teacher Quality and Urban Education			30 MoReg 1642	
5 CSR 80-860.010	Teacher Quality and Urban Education			This Issue	
5 CSR 100-200.060	Missouri Commission for the Deaf and Hard of Hearing			30 MoReg 1440	
	DEPARTMENT OF TRANSPORTATION				
7 CSR 10-2.010	Missouri Highways and Transportation Commission			30 MoReg 1708R	
7 CSR 10-9.010	Missouri Highways and Transportation Commission			30 MoReg 689	30 MoReg 1753
7 CSR 10-9.020	Missouri Highways and Transportation Commission			30 MoReg 689	30 MoReg 1753
7 CSR 10-9.030	Missouri Highways and Transportation Commission			30 MoReg 691	30 MoReg 1753
7 CSR 10-9.040	Missouri Highways and Transportation Commission			30 MoReg 692	30 MoReg 1754
7 CSR 10-9.050	Missouri Highways and Transportation Commission			30 MoReg 692	30 MoReg 1754
7 CSR 10-9.060	Missouri Highways and Transportation Commission			30 MoReg 693	30 MoReg 1754
7 CSR 10-24.010	Missouri Highways and Transportation Commission			This Issue	
7 CSR 10-24.020	Missouri Highways and Transportation Commission			This Issue	
7 CSR 10-24.030	Missouri Highways and Transportation Commission			This Issue	
7 CSR 10-24.040	Missouri Highways and Transportation Commission			This Issue	
7 CSR 10-24.050	Missouri Highways and Transportation Commission			This Issue	
7 CSR 10-24.060	Missouri Highways and Transportation Commission			This Issue	

Rule Number	Agency	Emergency	Proposed	Order	In Addition
7 CSR 10-24.070	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.080	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.100	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.110	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.120	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.130	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.140	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.150	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.200	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.210	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.300	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.310	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.320	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.330	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-24.413	Missouri Highways and Transportation Commission		This Issue		
7 CSR 10-25.010	Missouri Highways and Transportation Commission				30 MoReg 1852
7 CSR 10-25.020	Missouri Highways and Transportation Commission		30 MoReg 1709		
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10 CSR 10-2.390	Air Conservation Commission			30 MoReg 797		
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10 CSR 10-6.360	Air Conservation Commission			30 MoReg 522	30 MoReg 1825	
10 CSR 10-6.380	Air Conservation Commission			30 MoReg 549	30 MoReg 1845	
10 CSR 10-6.390	Air Conservation Commission			30 MoReg 553	30 MoReg 1848	
10 CSR 20-7.015	Clean Water Commission			30 MoReg 838		
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10 CSR 23-3.100	Geological Survey and Resource Assessment Division		30 MoReg 755			
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12 CSR 10-500.210	Director of Revenue			30 MoReg 1052	30 MoReg 1850W	
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13 CSR 70-10.015	Division of Medical Services		30 MoReg 761 30 MoReg 1605	30 MoReg 982	30 MoReg 1755	

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19 CSR 20-1.025	Division of Environmental Health and Communicable Disease Prevention		30 MoReg 647	30 MoReg 1665	
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20 CSR 300-2.200	Market Conduct Examinations		30 MoReg 988	30 MoReg 1851	
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1 CSR 10-15.010	Cafeteria Plan	30 MoReg 1783	February 27, 2006
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2 CSR 70-11.040	Bakanae of Rice Exterior Quarantine	30 MoReg 1433	November 23, 2005
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4 CSR 240-31.010	Definitions	30 MoReg 1435	February 15, 2006
4 CSR 240-31.050	Eligibility for Funding—Low-Income Customers and Disabled Customers	30 MoReg 1435	February 15, 2006
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10 CSR 23-5.050	Construction Standards for Closed-Loop Heat Pump Wells	30 MoReg 760	September 27, 2005
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11 CSR 10-5.010	Missouri Veteran's Recognition Program	30 MoReg 1784	January 24, 2006
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12 CSR 10-23.428	All Terrain Vehicles Modified for Highway Use	30 MoReg 1491	December 16, 2005
12 CSR 10-24.448	Documents Required for Issuance of a Driver or Nondriver License or Instruction Permit	30 MoReg 1603	December 29, 2005
12 CSR 10-405.100	Homestead Preservation Credit—Procedures	30 MoReg 603	September 15, 2005
12 CSR 10-405.200	Homestead Preservation Credit—Qualifications and Amount of Credit	30 MoReg 604	September 15, 2005
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13 CSR 35-80.020	Residential Care Agency Cost Reporting System	30 MoReg 1491	December 27, 2005
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13 CSR 40-2.200	Determining Eligibility for Medical Assistance	30 MoReg 1785	February 23, 2006
13 CSR 40-2.375	Medical Assistance for Families	30 MoReg 1436	December 27, 2005
13 CSR 40-110.020	Federal Income Tax Refund Offset Fee	30 MoReg 605	September 25, 2005
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13 CSR 70-2.020	Scope of Medical Services for General Relief Recipients	30 MoReg 1522	December 27, 2005
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13 CSR 70-4.110	Placement of Liens on Property of Certain Institutionalized Medicaid Eligible Persons	This Issue	February 27, 2006
13 CSR 70-10.015	Prospective Reimbursement Plan for Nursing Facility Services	30 MoReg 761	September 27, 2005
13 CSR 70-10.015	Prospective Reimbursement Plan for Nursing Facility Services	30 MoReg 1605	December 27, 2005
13 CSR 70-10.080	Prospective Reimbursement Plan for HIV Nursing Facility Services	30 MoReg 761	September 27, 2005
13 CSR 70-10.080	Prospective Reimbursement Plan for HIV Nursing Facility Services	30 MoReg 1607	December 27, 2005
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13 CSR 70-99.010	Comprehensive Day Rehabilitation Program	This Issue	February 27, 2006

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19 CSR 30-1.074	Dispensing Without a Prescription	Next Issue	February 23, 2006
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19 CSR 30-81.030	Evaluation and Assessment Measures for Title XIX Recipients and Applicants in Long-Term Care Facilities	30 MoReg 1608	December 27, 2005

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19 CSR 60-50.430	Application Package	30 MoReg 1525	December 30, 2005

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20 CSR 10-2.400	Records	Next Issue	February 23, 2006

Life, Annuities and Health

20 CSR 400-3.650	Medicare Supplement Insurance Minimum Standards Act	30 MoReg 1219	February 2, 2006

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20 CSR 700-1.145	Demonstrating Incompetence, Untrustworthiness or Financial Irresponsibility in the Conduct of Variable Life and Variable Annuity Business by Insurance Producers	30 MoReg 1043	January 1, 2006

Executive Orders	Subject Matter	Filed Date	Publication
	2005		
05-01	Rescinds Executive Order 01-09	January 11, 2005	30 MoReg 261
05-02	Restricts new lease and purchase of vehicles, cellular phones, and office space by executive agencies	January 11, 2005	30 MoReg 262
05-03	Closes state's Washington D.C. office	January 11, 2005	30 MoReg 264
05-04	Authorizes Transportation Director to issue declaration of regional or local emergency with reference to motor carriers	January 11, 2005	30 MoReg 266
05-05	Establishes the 2005 Missouri State Government Review Commission	January 24, 2005	30 MoReg 359
05-06	Bans the use of video games by inmates in all state correctional facilities	January 24, 2005	30 MoReg 362
05-07	Consolidates the Office of Information Technology to the Office of Administration's Division of Information Services	January 26, 2005	30 MoReg 363
05-08	Consolidates the Division of Design and Construction to Division of Facilities Management, Design and Construction	February 2, 2005	30 MoReg 433
05-09	Transfers the Missouri Head Injury Advisory Council to the Department of Health and Senior Services	February 2, 2005	30 MoReg 435
05-10	Transfers and consolidates in-home care for elderly and disabled individuals from the Department of Elementary and Secondary Education and the Department of Social Services to the Department of Health and Senior Services	February 3, 2005	30 MoReg 437
05-11	Rescinds Executive Order 04-22 and orders the Department of Health and Senior Services and all Missouri health care providers and others that possess influenza vaccine adopt the Center for Disease Control and Prevention, Advisory Committee for Immunization Practices expanded priority group designations as soon as possible and update the designations as necessary	February 3, 2005	30 MoReg 439
05-12	Designates members of staff with supervisory authority over selected state agencies	March 8, 2005	30 MoReg 607
05-13	Establishes the Governor's Advisory Council for Plant Biotechnology	April 26, 2005	30 MoReg 1110
05-14	Establishes the Missouri School Bus Safety Task Force	May 17, 2005	30 MoReg 1299
05-15	Establishes the Missouri Task Force on Eminent Domain	June 28, 2005	30 MoReg 1610
05-16	Transfers all power, duties and functions of the State Board of Mediation to the Labor and Industrial Relations Commission of Missouri	July 1, 2005	30 MoReg 1612
05-17	Declares a DROUGHT ALERT for the counties of Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Howell, Iron, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Pike, Ralls, Reynolds, Ripley, Ste. Francois, Ste. Genevieve, Scott, Shannon, Stoddard and Wayne	July 5, 2005	30 MoReg 1693
05-18	Directs the Director of the Department of Insurance to adopt rules to protect consumer privacy while providing relevant information about insurance companies to the public	July 12, 2005	30 MoReg 1695
05-19	Creates the Insurance Advisory Panel to provide advice to the Director of Insurance	July 19, 2005	30 MoReg 1786
05-20	Establishes the Missouri Homeland Security Advisory Council. Creates the Division of Homeland Security within the Department of Public Safety. Rescinds Executive Orders 02-15 and 02-16	July 21, 2005	30 MoReg 1789
05-21	Creates and amends Meramac Regional Planning Commission to include Pulaski County	August 22, 2005	Next Issue
05-22	Establishes the State Retirement Consolidation Commission	August 26, 2005	Next Issue
05-23	Acknowledges regional state of emergency and temporarily waives regulatory requirements for vehicles engaged in interstate disaster relief	August 30, 2005	Next Issue
05-24	Implements the Emergency Mutual Assistance Compact (EMAC) with the state of Mississippi, directs SEMA to activate the EMAC plan, authorizes use of the Missouri National Guard	August 30, 2005	Next Issue
05-25	Implements the Emergency Mutual Assistance Compact (EMAC) with the state of Louisiana, directs SEMA to activate the EMAC plan, authorizes use of the Missouri National Guard	August 30, 2005	Next Issue
05-26	Declares a sate of emergency in Missouri and suspends rules and regulations regarding licensing of healthcare providers while treating Hurricane Katrina evacuees	September 2, 2005	October 17, 2005
05-27	Directs all relevant state agencies to facilitate the temporary licensure of any healthcare providers accompanying and/or providing direct care to evacuees	September 2, 2005	October 17, 2005

Executive Orders	Subject Matter	Filed Date	Publication
05-28	Declares that a State of Emergency exists in the State of Missouri, directs that the Missouri State Emergency Operations Plan be activated, and authorizes the use of state agencies to provide support to the relocation of Hurricane Katrina diseaster victims	September 4, 2005	October 17, 2005
05-29	Directs the Adjutant General call and order into active service such portions of the organized militia as he deems necessary to aid the executive officials of Missouri, to protect life and property, and to support civilian authorities	September 4, 2005	October 17, 2005
05-30	Governor Matt Blunt establishes the Office of Supplier and Workforce Diversity to replace the Office of Equal Opportunity, Declares policies and procedures for procuring goods and services and remedying discrimination against minority and women-owned business enterprises	September 8, 2005	October 17, 2005
	2004		
04-01	Establishes the Public Safety Officer Medal of Valor, and the Medal of Valor Review Board	February 3, 2004	29 MoReg 294
04-02	Designates staff having supervisory authority over agencies	February 3, 2004	29 MoReg 297
04-03	Creates the Missouri Automotive Partnership	January 14, 2004	29 MoReg 151
04-04	Creates the Missouri Methamphetamine Education and Prevention Task Force	January 27, 2004	29 MoReg 154
04-05	Establishes a Missouri Methamphetamine Treatment Task Force	January 27, 2004	29 MoReg 156
04-06	Establishes a Missouri Methamphetamine Enforcement and Environmental Protection Task Force	January 27, 2004	29 MoReg 158
04-07	Establishes the Missouri Commission on Patient Safety and supercedes Executive Order 03-16	February 3, 2004	29 MoReg 299
04-08	Transfers the Governor's Council on Disability and the Missouri Assistive Technology Advisory Council to the Office of Administration	February 3, 2004	29 MoReg 301
04-09	Requires vendors to disclose services performed offshore. Restricts agencies in awarding contracts to vendors of offshore services	March 17, 2004	29 MoReg 533
04-10	Grants authority to Director of Department of Natural Resources to temporarily waive regulations during periods of emergency and recovery	May 28, 2004	29 MoReg 965
04-11	Declares regional state of emergency because of the need to repair electrical outages by various contractors, including a Missouri contractor. Allows temporary exemption from federal regulations	May 28, 2004	29 MoReg 967
04-12	Declares emergency conditions due to severe weather in all Northern and Central Missouri counties	June 4, 2004	29 MoReg 968
04-13	Declares June 11, 2004 to be day of mourning for President Ronald Reagan	June 7, 2004	29 MoReg 969
04-14	Establishes an Emancipation Day Commission. Requests regular observance of Emancipation Proclamation on June 19	June 17, 2004	29 MoReg 1045
04-15	Declares state of emergency due to lost electrical service in St. Louis region	July 7, 2004	29 MoReg 1159
04-16	Orders a special census be taken in the City of Licking	July 23, 2004	29 MoReg 1245
04-17	Declares that Missouri implement the Emergency Mutual Aid Compact (EMAC) agreement with the State of Florida	August 18, 2004	29 MoReg 1347
04-18	Accepts retrocession of federal jurisdiction over the St. Louis Army Ammunition Plant	August 25, 2004	29 MoReg 1349
04-19	Implements the EMAC with the State of Florida, activates the EMAC plan, and authorizes the use of the Missouri National Guard	September 10, 2004	29 MoReg 1430
04-20	Reestablishes the Poultry Industry Committee	September 14, 2004	29 MoReg 1432
04-21	Directs the creation of the Forest Utilization Committee within the Missouri Department of Conservation	September 14, 2004	29 MoReg 1434
04-22	Requests health care providers limit influenza vaccinations to high risk persons. Orders various actions by providers, Missouri Department of Health and Senior Services, and Attorney General's Office regarding influenza vaccine supply.	October 25, 2004	29 MoReg 1683
04-23	Creates the Forest Utilization Committee within the Missouri Department of Conservation. Supersedes and rescinds Executive Order 04-21	October 22, 2004	29 MoReg 1685
04-24	Rescinds Executive Order 03-15	October 22, 2004	29 MoReg 1687
04-25	Rescinds Executive Order 03-27	October 22, 2004	29 MoReg 1688

Executive Orders	Subject Matter	Filed Date	Publication
04-26	Authorizes Adjutant General to recognize Noncommissioned Officers with a First Sergeant's ribbon	November 1, 2004	29 MoReg 1791
04-27	Closes state offices Friday November 26, 2004	November 1, 2004	29 MoReg 1792
04-28	Closes state offices Monday, January 10, 2005	December 6, 2004	29 MoReg 2256
04-29	Rescinds Executive Order 04-22	January 4, 2005	30 MoReg 147

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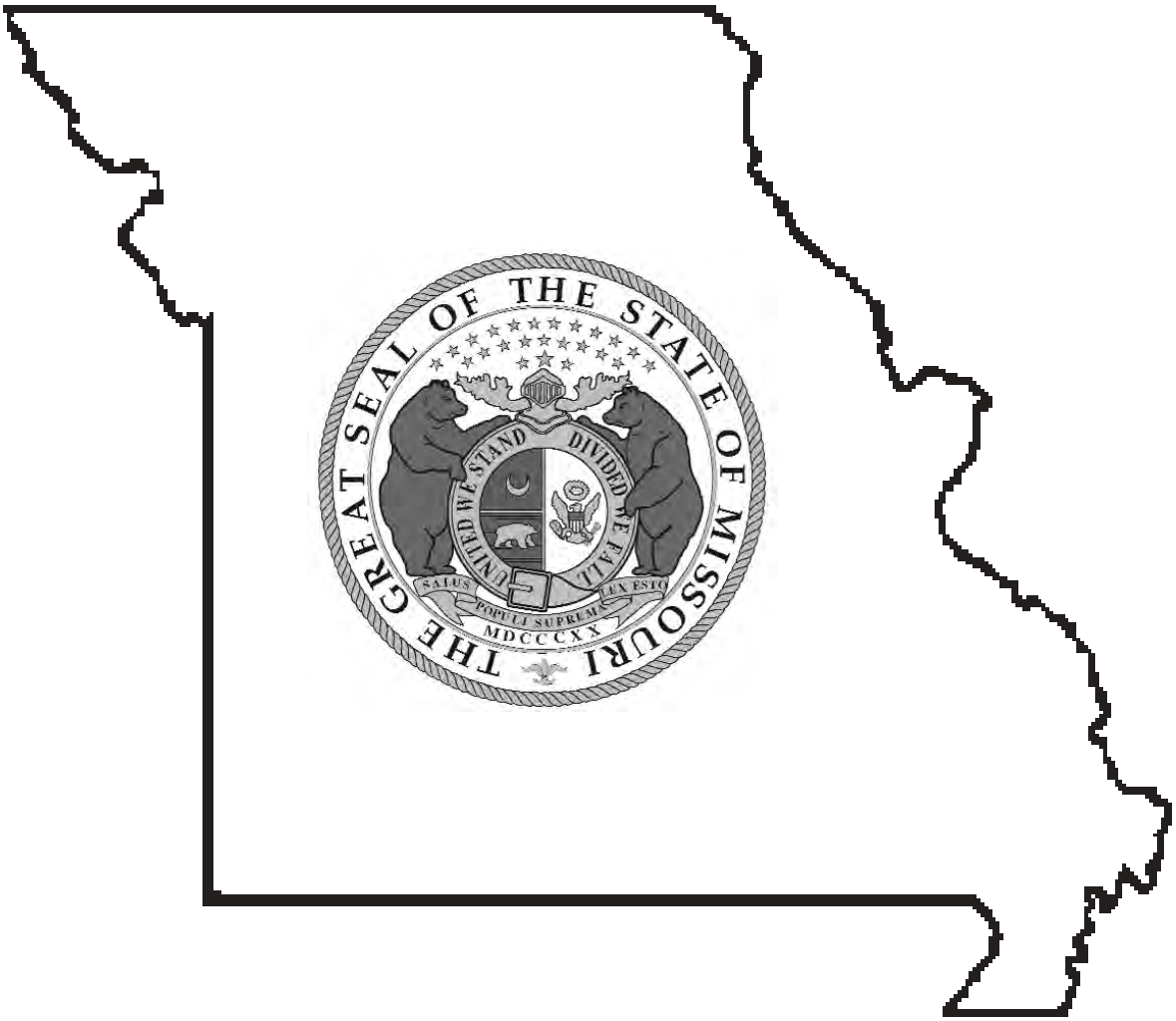

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- **address, and**
- **date in order to specify how a copy of the material may be obtained, and**
- **shall state that the referenced rule, regulation, standard, or guideline does not include any later amendments or additions.**

The agency adopting a rule, regulation, standard, or guideline under this section shall maintain a copy of the referenced rule, regulation, standard, or guideline at the headquarters of the agency and shall make it available to the public for inspection and copying at no more than the actual cost of reproduction.

The secretary of state may omit from the *Code of State Regulations* such material incorporated by reference in any rule the publication of which would be unduly cumbersome or expensive.

Office of the Secretary of State

ROBIN CARNAHAN

9/15/05

ROBIN CARNAHAN
SECRETARY OF STATE
PO BOX 1767
JEFFERSON CITY, MO 65102

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